

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

DOCKET NUMBER:

77-1056

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

*B
P/S*

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-vs-

ALFRED D. MCGILBERRY,

Defendant-Appellant.

+ APPENDIX
B R I E F / F O R A P P E L L A N T

APPEAL FROM THE JUDGMENT OF THE DISTRICT COURT, FOR THE
NORTHERN DISTRICT OF NEW YORK



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PRELIMINARY STATEMENT

This is an appeal from a verdict of guilty rendered after a jury trial on an indictment alleging violations of Title 42 U. S. C. Section 408 (d) in the United States District Court, Northern District of New York, District Judge Lloyd F. MacMahon presiding.

Counsel for the defendant was appointed pursuant to Title 18 U. S. C. Section 3006 and hereby acknowledges that it will use, to some extent, the rules relative to proceeding without appendix provided by Rule 30 of the Rules Supplementing Federal Rules of Appellate Procedure, adopted by the Second Circuit Court of Appeals.

STATEMENT OF ISSUES PRESENTED

1. May the conviction in this case on eight counts of the fifteen-count indictment charging fraudulent concealment of the facts of the defendant's employ be upheld in view of the complete lack of proof regarding a fraudulent intent, and in view of the fact the Social Security Administration acquiesced in, condoned and failed to criticize the defendant's behavior.

2. Did the trial judge's denial of the motion to dismiss the indictment at the close of the prosecution's case, in view of the fact that the government failed to produce any evidence of fraudulent concealment, place an unconstitutionally heavy burden on the defendant to prove his innocence of the crime charged.

3. Is it an abuse of discretion on the part of the trial judge to prohibit the eliciting of testimony relating to the inefficiency of the Social Security Administration and thereby prohibiting the defendant's attempt to demonstrate his lack of fraudulent intent and demonstrating that the fault, if any, lay with the procedures used by the Social Security Administration.

4. Was it a violation of the defendant's right to due process of law, for the trial judge to impose a "special condition" on the order of probation concerning restitution to the Social Security Administration of funds which they, by law, have no right to collect.

FACTS

As stated in the Preliminary Statement, this is an appeal from a verdict of guilty rendered by a jury on eight counts of a fifteen-count indictment charging fraudulent concealment of an event effecting the defendant's right to receive Social Security Benefits.

The indictment and subsequent verdict were based upon alleged violations of Title 42 U. S. C. Section 408 (d).

The full record herein reflects the fact that the defendant made application for Social Security Benefits on behalf of himself and his daughter, Michelle, on or about January 4, 1971, (A.1-8), on the grounds that he suffered total disability as the result of a lung condition, sarcoidosis. (A.1)

Subsequent to this application and on or about May 6, 1971, an order was made by the Social Security Administration granting benefits to the appellant and his child, Michelle.

Thereafter and on or about March 10, 1972, the appellant also made an application on behalf of his other daughter, Monique, and an award of benefits was subsequently granted retroactive to November of 1971 (A.9-12).

Prior to the time of trial it was stipulated to by the United States Attorney and the Counsel for the defendant, the defendant had worked for certain periods while receiving Social Security Benefits. This stipulation was as follows:

<u>PERIOD</u>	<u>EMPLOYER</u>
January, 1971	Melbourn Hotel, Ellenville, New York (A.17)
March, 1971	Goldman & Goldman, West Orange, N.J. (A.16)
April 11, 1971- December, 1971	S. M. Flickinger (Super Duper) Syracuse, New York (A.15)
March, 1972- May, 1972	Syracuse University, Syracuse, New York (A.14)
August, 1972- December, 1973	Sam Dell's Dodge Corp., Syracuse, New York (A.13)

During the period of time the defendant was receiving Social Security Benefits on behalf of himself and his daughters, the record and the records of the Social Security Administration reflect that the defendant was contacted on several occasions by the Administration, primarily to obtain reports of work activity. (A.18-45).

These records also reflect that during the course of interviews or in response to mail questionnaires of the Social Security Administration, the defendant responded in a cooperative fashion advising them of his work activities during the periods covered by their inquiries. (A.18,20,21,22,23,27,&31 Trial Transcript hereafter referred to as T. T., Pages 41,42,43,44,45,57, 68,76).

Thereafter, and apparently pursuant to questions raised by the defendant's response to the inquiries of the Social Security Administration on 11-15-73 (A.29), the Social Security began a series of office interviews termed cessation interviews (A.34,29,40-41) also used to question the defendant concerning the Social Security's right to a refund. The product of these interviews was the defendant's voluntary statement to explain

irregularities (A.35-38) and the termination of his benefits pursuant to the letters of the Social Security Administration dated 3-14-74, (A.42-43) and 7-12-74 (A.44).

Subsequent to these events the defendant was also brought into the office of the Social Security Administration for an interview relative to the alleged over-payments. This interview was conducted August 28, 1974. (A.45)

Thereafter and on or about the 4th day of February, 1976, a fifteen-count indictment was handed down by the Grand Jury alleging fifteen misdemeanor violations of Title 42 U. S. C. Section 408 (d). (Record hereafter referred to as R.1-10)

The gravamen of the indictment, as earlier stated, was not the making of a fraudulent application, or the receiving of monies from various employers while simultaneously receiving Social Security Benefits, but the defendant was charged with the failure to notify the Social Security Administration of an event or occurrence effecting his right to receive disability benefits (to wit: his acceptance of employment) with an intent to defraud the Administration (R.1-10).

Five counts of this indictment were based upon the benefits received by the defendant himself, five upon the receipt of benefits by the defendant on behalf of his daughter, Michelle, and five based upon receipt of benefits on behalf of his daughter, Monique. (R.1-10)

The five instances of alleged fraudulent concealment arise out of the defendant's acceptance of employment at five different locations as stipulated to prior to the time of trial.

The indictment breaks down as follows:

<u>COUNT</u>	<u>BENEFICIARY</u>	<u>EMPLOYER</u>
1	Defendant	Melbourn Hotel
2	" "	Goldman & Goldman
3	" "	Flickinger
4	" "	Syracuse University
5	" "	Sam Dell's Dodge
6	Michelle	Melbourn Hotel
7	" "	Goldman & Goldman
8	" "	Flickinger
9	" "	Syracuse Universit
10	" "	Sam Dell's Dodge
11	Monique	Melbourn Hotel
12	" "	Goldman & Goldman
13	" "	Flickinger
14	" "	Syracuse University
15	" "	Sam Dell's Dodge

Counts 11, 12 and 13 were dismissed prior to the time of trial for the apparent reason that the application for benefits on behalf of Monique was not made until after the defendant had been employed by the Melbourn Hotel, Goldman & Goldman, and Flickinger's.

After trial the defendant was found guilty of counts 3, 4, 5, 8, 9, 10, 14, 15, sentenced to serve one year pursuant to Title 18 U. S. C. Section 3651 as amended, with the defendant to serve three months in a jail-type institution, remainder of the sentence was suspended subject to compliance with the probation order, one of the terms of which is that the defendant make

restitution. All sentences on each counts were directed to run concurrently (R.32). This appeal followed thereafter.

POINT ONE

THE VERDICT OF GUILTY, ON EACH OF THE COUNTS INDIVIDUALLY AND AS A WHOLE ARE CONTRARY TO THE GREAT WEIGHT OF THE EVIDENCE IN THIS CASE.

It is important at the outset to note with particularity that the instant criminal action was not based upon any of the following contentions:

1. That the defendant fraudulently applied for Social Security Benefits.
2. That the defendant fraudulently stated that he had a disability.
3. That the defendant fraudulently accepted money from employers while at the same time receiving Social Security Benefits.

The indictment presented (R.1-10) and the arguments made by the United States Attorney (T.T. 14-20,81-86) clearly indicate that the so-called "fraud" in this case consisted of the defendant's failure to report the fact that he had worked after having agreed to do so on his initial application. (A.4)

Title 42 U. S. C. Section 408 (d), provides a misdemeanor penalty for,

"Whoever... (d) having knowledge of any event effecting (1) his initial or continued right to any payment under this subchapter or (2) the initial or continued right to any payment of any other individual in whose behalf he has applied for or is receiving such payment, conceals or fails to disclose such event with an intent fraudulently to secure payment either in a greater amount than is due or when no payment is authorized;" (Emphasis added).

As stated in the statute, "intent fraudulently" is a clear manifestation of a legislative direction that the specific intent to defraud the government be found prerequisite to the commitment of a violation of this statute.

In commenting on Section 408 generally, the Court, in United States vs. Morrison, 43 F. R. D. 519, (D. C. Ill. 1967) stated, "These counts were phrased in the precise language of Section 408 (c) (not applicable to the present case). For the most part, that section does not include the element of specific intent. Since 408 (d) involved in count 1 does require a specific intent, we believe Congress intended a deliberate distinction between the two subsections and purposely omitted the element of specific intent from 408 (c)..."

The Court in Morrison, (Supra) also quoted language relative to the definition of specific intent which we believe relevant to the case at hand, from the case of United States vs. Irwin, 345 F. 2nd 192, 197, (2nd Cir. 1965, Cert. Denied 383 U. S. 967) "...to convict an accused under (a statute requiring specific intent)... it is necessary that the government prove he committed the act prohibited knowingly and purposfully and not through accident, mis-understanding, inadvertence or other innocent reasons..."

In a further comment on specific intent the Court, in Irwin (Supra) stated that, "The state of mind with which the acts is done is an essential element of the offense which the government must prove".

"...the jury must find that the failure to disclose was an intentional omission and made with the intent to deceive and mislead." United States vs. Mandel, 415 F. Supp. 997 (D. Maryland

1976). (See also United States vs. Simons 425 F. 2nd 796, Cert. Denied 90 S. Ct. 1235, 397 U. S. 1006, 25 L. Ed. 2nd 420, where Court indicated that while evil motives need not be shown, criminal intent must be shown.)

One might also find an analogy to Title 18 U. S. C. Sec. 1001 appropriate, insofar as it deals with fraudulent failure to disclose information. That section requires that such failure be made by a scheme, trick or device which to a large extent really states the obvious in any "fraudulent" intent situation. With reference to that Section it has been stated that it "encompasses within its proscription two distinct offenses, concealment of a material fact and false representations.... what must be proven to establish each offense however differs significantly. False representations, like common law perjury, require proof of actual falsity; concealment requires proof of willful nondisclosure by means of a "trick, scheme or device". United States vs. Adler, 380 F. 2d 917, Cert. denied 88 S. Ct. 561, 389 U. S. 1006, 19 L. Ed. 2d 602.

Quite clearly, in the present matter, even viewing the evidence in a light most favorable to the prosecution, the government has failed to produce a scintilla of evidence that the defendant's failure to notify the Social Security Administration of his obtaining employment was to any degree fraudulent.

The following is an itemized analysis of each of the contacts which were made with the defendant concerning his employments while he was receiving Social Security Disability Benefits. On February 7, 1971, the defendant was contacted by a Social Security Representative. (A.18-19) This report clearly

demonstrates the defendant's willingness to disclose information regarding his work activity. The prosecution has made much of the fact that at this time the defendant should have advised the Social Security Administration of his employment at the Melbourn Hotel. The following points should be noted concerning this contention:

1. That as will be shown in reference to a subsequent contact made by the Social Security Administration, such reports are unreliable inasmuch as the Social Security Administration representative may have limited his questioning concerning work activity to the year prior to the year 1971 (See E. G. T.T. 58-60).

2. Social Security claimants are commonly told they can work, earning up to \$140.00 a month (T.T.-70) and the record of earning submitted by the employer dated October 13, 1972 (A.46) reflects that the defendant worked only during the month of January and earnings were posted in the amount of \$117.50.

3. That such an omission fails to demonstrate any fraudulent intent on the part of the defendant.

The defendant was next contacted concerning his work activity on June 20, 1972 via a letter forwarded to him by C. C. Hall. The defendant in his reply to that letter dated July 4, 1972, reported that he had been working at Syracuse University. The following points should be noted:

1. It may here be claimed that since the defendant had worked in 1971, that he should have reported it on this form. However, the Social Security Administration directed their inquiry to a specific time period by virtue of question 1, which states, "Have you worked at any time since the dates shown in the

first paragraph of the preceding page" (A.31). The date on the preceding page is January 1972 (A.30).

2. This employment comprises counts 4, 9, and 14 of the indictment (R.3-4,6,8) and the defendant was found guilty of each of these counts. (R.32) It is here difficult to determine the basis for making such a finding when the defendant notified the Social Security Administration of the fact of this employ a mere four months after the employment had been stipulated to have begun, and in view of the fact that he notified them willingly and without hesitation on their first inquiry.

As was noted by trial judge concerning mere failure to report work activity, "So he doesn't do it. That doesn't prove fraud. Show me where your proof of fraud is on each count". (T.T. 83-84).

With reference to these counts, there is absolutely no evidence the defendant "knowingly and purposfully and not through accident, misunderstanding, inadvertence or other innocent reasons..." (Irwin Supra at 197) failed to notify the Social Security Administration pursuant to his agreement to do so. The next contact by the Social Security Administration was on September 20, 1972. The records of this interview reflect that the claimant, without hesitation and without benefit of an attorney, appeared at the offices of the Social Security Administration and willingly disclosed the fact that he had worked at the Melbourn Hotel (A.21) S. M. Flickinger (Super Duper) (A.22) and the Goldman Hotel (A.23) (It should be noted that the employment at Flickinger's accounts for verdicts of guilty on counts 3, and 8 of the indictment, (R. 3, 6, and R. 32) The defendant was found not guilty of those counts involving the

Melbourn Hotel (1 and 6) and Goldman and Goldman (2 and 7).

The following points should be noted.

1. The prosecution bases much of its contention of fraud in concealing the employment at Sam Dell's Dodge on this particular interview (See T. T. 57-58) inasmuch as M.S. Vanier made notations concerning the daily activity which do not contain any reference to employment at Sam Dell's Dodge while it had been stipulated that at the time of the interview, the defendant had in fact been working, (A.13). While this witness was allowed over objection to testify that the defendant "... must not have, he did not, because it is not indicated in any of the forms." advise her that he was working at Sam Dell's Dodge at the time of the interview, it was subsequently acknowledged that this witness limited her questioning to the year of 1971, and did not question him as to current employment (T.T. 58-61). This serves to demonstrate the basic unreliability of the contact reports which do not indicate on their face the periods of time concerning which questioning was done and it also certainly casts into doubt, as unreliable, the interviewers testimony and report concerning "daily activity" (A.20,25, T.T.61).

The fact of the matter is that the interviewer may not have permitted the defendant to speak to activities in 1972. The objection made by defense counsel (T.T. 58) should certainly have been sustained in view of the highly prejudicial and unreliable nature of M. S. Vanier's testimony.

In view of the fact that at this interview, the defendant disclosed his employment with the Melbourn Hotel, Goldman Hotel, and S. M. Flickinger (A.21-23), the verdicts of not guilty

with respect to counts 1 and 2 and counts 6 and 7 are inconsistent with the finding of guilty in counts 3 and 8, dealing with his employment at Flickinger's. In view of the fact the disclosures were made at the same time, it is difficult to determine how a jury, could reasonably conclude that fraud existing as to one of the employments when it did not exist as to the others. This is especially so in view of the lack of evidence of fraud which permeates the entire case.

The final work activity contact was by letter of Nov. 15, 1973 (A.26-29) and the defendant therein responded to the inquiry presented by indicating willingly, and with no apparent attempt to conceal any facts, that he had been working at Sam Dell's Dodge since September of 1972 (A.27). The following points should be noted:

1. This employment represents the remaining counts of the indictment on which the defendant was found guilty, 5, 10, and 15 (R.4-5, 6-7, 8 and 32) and once again it is difficult to determine a reasonable basis for the jury so finding.

The only possible basis for such a finding is the testimony and report of M. S. Vanier (A.20-25, T.T.61) in which it was stated, that she questioned the defendant concerning his "daily activities" and he made no mention of working at Sam Dell's Dodge, this while the defendant admittedly was so employed (A.13, 27).

However, it is once again to be noted that this particular testimony is inherently unreliable, particularly in view of the prejudicial statement that she was allowed to make during the course of the trial, (T.T. 58) that the defendant had not

informed her of his employ at Sam Dell's, when in fact her subsequent testimony indicated quite clearly that respecting employment, she specifically restricted her questioning to the year 1971, and there can be no question that the defendant willingly advised her as to his employment during that period (A.21-23).

It might be important to note, with respect to any finding of fraudulent intent as to the reporting of these employments, that the Social Security Administration bolstered the defendant's apparent belief that he was proceeding in accord with the statutes and regulations governing the Social Security Administration by virtue of the fact that:

A. They did not terminate his benefits in July of 1972 upon being informed that he had worked at the Syracuse University, nor did they advise him that he might in fact be terminated, nor was he criticized at that time for failing to notify the Social Security Administration promptly of his work activity.

B. They did not terminate his benefits in September of 1972 upon being informed that he had worked at the Melbourn Hotel, Goldman & Goldman, and S. M. Flickinger's, nor did they advise him he might be terminated, nor was he criticized at that time for failure to notify the Social Security Administration promptly of his work activity.

In point of fact, they did not notify the defendant of their intent to terminate him until the interview of November 19, 1973 (A.34) and did not in fact terminate him until March 14, 1974 (A.42).

It would almost appear that the Social Security Administration acquiesced in his behavior throughout the entire period in question, condoning it and allowing him to continue under the mistaken impression that he could work, and continue to collect his benefits.

In summary, it is patently apparent that the government has failed to prove the necessary fraudulent intent with respect to each of the counts of the indictment, both examined individually, and as a whole.

This is not a case such as United States vs. Zavala 139 F. 2d 830 (C.A. N.Y. 1944) where there existed a blatant, willful failure to disclose.

They failed to prove that the defendant "... committed the prohibited act knowingly and purposefully and not through accident, misunderstanding, inadvertence or other innocent reasons...". (Irwin, Supra).

It is respectfully submitted that the jury's findings of guilty on the counts in question are not supported by evidence which in fact demonstrates a distinct lack of any fraudulent intent.

POINT TWO

THE TRIAL JUDGE'S DENIAL OF THE DEFENSE MOTION TO DISMISS MADE AT THE CLOSE OF THE GOVERNMENT'S CASE WAS ERROR AND IMPERMISSIBLY SHIFTED THE BURDEN OF PROOF TO THE DEFENDANT.

A careful review of the facts presented in this case reveals that the government failed in their burden of proof of guilt beyond a reasonable doubt.

In light of the government's proof that the defendant did in fact disclose his employments to the Social Security Administration, willingly and at their request, it would appear that they have, at the very most, established the defendant's negligence in failing to report immediately upon obtaining employment. In this respect such negligence might possibly be excusable in view of the fact that even after the defendant advised the Social Security Administration in July of 1972, (A.26-29) it took approximately two years before he was formally and finally advised that his benefits had been terminated. (A.42-23)

While admittedly the prosecution in this case faced a tremendous burden in attempting to prove an alleged criminal or fraudulent intent from the mere silence or inaction on the part of the defendant, it is respectfully submitted that when looked at as a whole, all the government succeeded in proving was the failure of the defendant to report promptly.

The combination of these factors leads one to conclude that the trial judge's refusal to dismiss the remaining counts of the indictment, in view of the lack of proof, (T.T. 80-81), should constitute a reversible error in that it impermissibly shifted

the burden of proving innocence to the defendant in the face of the absence of any proof of his guilt.

The trial judge himself recognized the inherent weakness in the prosecution's case in this exchange with the United States Attorney (after the United States Attorney had essentially stated his case T.T. 81-83):

THE COURT: Well, assuming all that, where is your proof of fraud, intent to defraud?

MR. CHALENSKI: The defendant, in his initial application, was told to report work activity.

THE COURT: So he doesn't do it. That doesn't prove fraud. Show me where your proof of fraud is on each count.
(T.T. 83-84)

It is apparent upon reading the following two-page explanation of the government's position with regard to fraudulent intent, that they were placing the burden on the defendant to come forward with the evidence to prove his lack of fraudulent intent in failing to report his work activity immediately (T.T. 84-86). It is also respectfully submitted that the government's explanation of their position clearly demonstrates no proof of fraudulent intent. (T.T. 81-86).

"The full burden rests on the government in all criminal cases to prove every essential element of the crime charge beyond a reasonable doubt. *Mullaney vs. Wilbur*, 421 U. S. 684, 696-702, 95 S. Ct. 1881, 1888-1891, 44 L. Ed. 508, 518-22 (1975), *In Re Winship*, 297, U. S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970)" *United States vs. Lange*, 528 F. 2d 1280 (5th Cir. 1976).

"...although intent is typically considered a fact peculiarly within the knowledge of the defendant, this does not, as the Court has long recognized, justify shifting the burden to him. (See Tot vs. United States, 319 U. S. 463, 469, 87 L. Ed. 1519, 63 S. Ct. 1241 (1943) Leary vs. United States, 395 U. S. 645, 23 L. Ed. 2d 57, 89 S. Ct. 1532 (1969)", Lange, Supra.

Based upon the evidence submitted herein it is contended that the denial of the motion made by defendant's counsel shifted impermissibly, the burden to the defendant to go forth and prove that his failure to notify the Social Security Administration immediately upon obtaining work was not fraudulent. In the face of the lack of any substantial evidence demonstrating that the defendant in fact had committed the offense charged, this constituted a denial of due process to the defendant.

POINT THREE

IT WAS ERROR ON THE PART OF THE TRIAL JUDGE TO PROHIBIT THE DEFENDANT'S COUNSEL FROM ELICITING TESTIMONY CONCERNING THE INEFFICIENCY OF THE SOCIAL SECURITY ADMINISTRATION.

Defendant's counsel in the course of the trial attempted to elicit testimony from the prosecution's witness, Mrs. Bravos, relating to the inefficiency of the Social Security Administration. (T.T. 49) This was an attempt on the part of the defense counsel to demonstrate that much of what the instant case was concerned with was not the alleged fraudulent concealment on the part of the defendant, but the tremendous inefficiency of the Social Security Administration as a whole and as it related to the present case, i.e. given the fact that in July of 1972 the defendant advised the Social Security Administration that he had worked for Syracuse University (A.31), why did it take until 1974 to formally terminate his benefits (A.42-43) and why was he not properly advised as to the effect of this report on his work activity.

Counsel for the defendant also sought to prove by this testimony the possibility the government was attempting to use the defendant as an example, a scapegoat.

As was noted by this Court in United States vs. Corr 543 F. 2d 1042, 1051, (1976), "It has long been recognized that a defendant's right to present a full defense is a fundamental element of due process derived from both the sixth and the fourteenth amendments. (Citing cases)"

And it is recognized by the defendant that as was stated in that case, "...rejection of testimony by the trial court does not necessarily mean that the defendant has been deprived of due process", and that in some cases "It is subject to the descretion of the trial court, the exercise of which may be overturned on appeal soley upon a showing of clear abuse of that descretion". Corr,Supra. See also United States vs. Robinson, 544 F. 2d 611.

The evidence intended to be elicited was essential to the defendant's case in that it would have permitted the defendant to demonstrate that the continued payment of benefits was not due to his failure to report work activity, but was due exclusively to the inefficiency of the Social Security Administration in responding to his work activity report of July 1972 (A.30-33) and correctly advising him as to his rights and duties with respect to that report.

It is therefore contended that the failure of the trial judge to allow the defense counsel to elicit this testimony constituted an abuse of descretion and a denial of due process to the defendant.

POINT FOUR

THE SPECIAL CONDITION IMPOSED IN THE SENTENCING ORDER THAT THE DEFENDANT MAKE RESTITUTION DENIES THE DEFENDANT DUE PROCESS OF LAW AND IS CONTRARY TO THE STATUTES AND REGULATIONS OF TITLE 42 UNITED STATES CODE.

Title 42 U. S. C. Section 404 governs the question of overpayments and underpayments. It states in relevant part that,

- (A) Whenever the secretary finds that more or less than the correct amount of payment has been made to any person under this subchapter, proper adjustment or recovery shall be made, under regulations prescribed by the secretary, as follows:
 - (1) With respect to payment to a person of more than the correct amount, the secretary shall...require such overpaid person or his estate to refund the amount in excess of the correct amount....
- (B) In any case in which more than the correct amount of payment has been made, there shall be no adjustment of payments to or recovery by the United States from, any person who is without fault if such adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience.

It is apparent from the records of the interviews conducted with the defendant concerning the question of a refund (A.40-45) that the defendant was not advised of his right to counsel nor fully informed of the opportunities that were available to him to contest the Social Security Administration's right to an overpayment. Particularly relevant on this point

is the exchange which occurred between the defendant's counsel and Mrs. Bravos, the prosecution's witness, in which it is indicated that no one assisted the defendant in processing an application for a waiver (T.T. 48) in spite of the fact that there are people in that department for the purpose of assisting claimants. (T.T.48)

Code of Federal Regulations, Section 404.510 specifies in relevant part:

"...an individual will be considered 'without fault' in accepting a payment which is incorrect...if it is shown that such failure to report or acceptance of the overpayment was due to one of the following circumstances:

- (b) Reliance upon erroneous information from an official source within the Social Security Administration... with respect to the interpretation of a pertinent provision of the Social Security Act... or regulations pertaining thereto."

In the instant cases as earlier stated the government failed to notify the defendant of the effect of his reporting employment upon his benefits and in fact continued to pay him for a considerable length of time thereafter.

It should also be noted that with respect to the benefits paid to his minor children, there is case law to support the position that such minor children, being "without fault" are not obligated to repay the Social Security Administration pursuant to this provision. See United States vs. Blackwell D. C. S. C. 1965, 238 F. Supp. 342, Prezioso vs. Flemming D. C. N. Y. 1960, 180 F. Supp. 784.

In view of the fact that the Social Security Administration ignored its own rules and regulations regarding the

question of overpayment and failed to notify the defendant of his rights and the rights of his children under those statutes and regulations, it is contended that the defendant has been deprived of due process under the fifth and fourteenth amendments of the United States Constitution by virtue of the "special condition" placed upon his sentencing and probation. (R.32)

CONCLUSION

In conclusion, the verdict of guilty rendered after jury trial in the District Court, Northern District of New York, on eight counts of a fifteen-count indictment, should be reversed with respect to each individual indictment, or the indictment taken as a whole and the indictment dismissed.

In the event that the verdict of guilty is reversed with respect to one or more counts of the indictment with one or more of those counts remaining, the case should be remanded to the Honorable Lloyd F. MacMahon, District Judge, Northern District of New York, for resentencing.

In the alternative, the case should be remanded to the Honorable Lloyd F. MacMahon for resentencing.

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APPLICATION FOR DISABILITY INSURANCE BENEFITS

Form Approved
Budget Bureau No. 72-R0536

(Do not write in this space)

NOTICE. — (a) Whoever makes or causes to be made any false statement or representation of a material fact in an application or for use in determining a right to payment under the Social Security Act, or (b) whoever, having received a payment for the use and benefit of another person, knowingly and willfully uses such payment for other than the person for whom it is received, is subject, under the Social Security Act, to a fine of not more than \$1,000 or 1 year's imprisonment, or both.

JAN 4 1971
SSA DISTRICT OFFICE

I hereby apply for a period of disability and/or all insurance benefits payable to me under Title II of the Social Security Act, as amended.

1.	Enter your full name <i>Nikred D. McGilberry</i>	(Check one) <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	Enter your Social Security number (If none or unknown so indicate) <i>157 124 7334</i>
----	---	--	--

2.	Enter your date of birth (Show month, day, and year) <i>8/29/31</i>	Enter the name of the State or Foreign Country where you were born <i>Pa.</i>
----	---	--

3. (a) Have you (or has someone on your behalf) ever filed an application for a period of disability or social security benefits before?
☐ Yes (If "Yes," answer (b), (c), and (d).) ☒ No (If "No," go on to item 4).

(b) Kind of claim filed

(c) Enter name of person on whose earnings record you filed other application(s)

(d) Enter Social Security Number of person named in (c)

4. What is your disability? (Briefly describe your impairment, that is, the injury or illness that prevents, or has prevented, you from working.)
Rodent Sarcoidosis

5. (a) When did you become unable to work because of your disability?	Date (Month, day, and year) <i>11/17/70 9/17/70</i>
---	--

(b) Are you still disabled?
☒ Yes (If "Yes," go on to item 6.) ☐ No (If "No," answer (c).)

(c) If you are no longer disabled, enter the date you were again able to work.	Date (Month, day, and year)
--	-----------------------------

6. Check any of the following which apply to you:

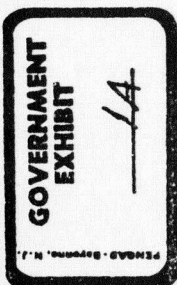
(a) <input type="checkbox"/> Confined in a medical institution other than a general hospital	(d) <input type="checkbox"/> Confined in a chair (Including wheel chair)
(b) <input type="checkbox"/> Patient in a general hospital	(e) <input type="checkbox"/> None of the above but unable to go outside
(c) <input type="checkbox"/> Confined in bed at home	(f) <input type="checkbox"/> Able to go outside but only with help of another person or device
	(g) <input checked="" type="checkbox"/> Able to go outside without help

FORM SSA-16 (1-70)

(Over)

BEST COPY AVAILABLE

A-1



7. (a) Have you EVER filed (or do you intend to file) claims for disability benefits under any workmen's compensation law or plan?

☐ Yes (If "Yes," answer (b) and (c).)

☒ No (If "No," go on to item 8.)

(b) Has there been any decision or any payment (temporary, permanent, or lump-sum) made on the claim(s) filed?

☐ Yes (If "Yes," answer (c) and (d).)

☐ No (If "No," answer (c).)

(c) Workmen's compensation claim number(s)

(d) Enter the amount of the weekly payment made to you \$

(If you are receiving or have received payments on other than a weekly basis, such as bi-weekly or monthly payments, or if you have received a lump-sum payment based on your workmen's compensation claim, please indicate in "Remarks" and include the amount of such payment or payments.)

8. Did you work in the railroad industry any time on or after January 1, 1937?

☐ Yes

☒ No

9. (a) Were you in active military or naval service after September 7, 1939?

☒ Yes (If "Yes," answer (b) and (c).)

☐ No (If "No," go on to item 10.)

(b) Enter name of branch (Army, Navy, etc.), country served (if other than U.S.) and dates of service.

~~Army~~ AIR FORCE - 6/51 - 10/54

(c) Have you received, or do you expect to receive, a benefit from any other Federal agency?

☐ Yes (If "Yes," enter the names of all such agencies.)

☐ No.

I have filed for disability but have had no

10. • Enter the names and addresses of all the persons, companies or government agencies for whom you worked during the last 12 months.

• If you worked in agricultural employment, give this information for this year and last year.

NOTE: If you were not an employee this year or last year, enter the information for your last period of employment no matter how long)

• If you have never been an employee, enter "none" below and go on to item 12 regarding self-employment.

NAME AND ADDRESS OF EMPLOYER	WORK BEGAN		WORK ENDED (If still working show "Not Ended")	
	Month	Year	Month	Year
1. B & V. Bakery, 1951 E. Fayette ST - 57A.	9	68	2	69
4. Liss Bakery, 54th St. Philadelphia, Pa.	9	70	9	70

(If you need more space, use Remarks space on the back page.)

11. May the Social Security Administration or the State agency reviewing your case ask your employers for information needed to process your claim?

☒ Yes

☐ No

12. Were you self-employed this year, last year, or the year before?

☒ Yes (If "Yes," answer item 13.)

☐ No (If "No," go on to item 14.)

CHECK THE YEAR OR YEARS IN WHICH YOU WERE SELF-EMPLOYED	IN WHAT KIND OF TRADE OR BUSINESS WERE YOU SELF-EMPLOYED?	WERE YOUR NET EARNINGS FROM YOUR TRADE OR BUSINESS \$400 OR MORE? (Check "Yes" or "No")	
<input checked="" type="checkbox"/> This Year	Bakery - operated own	business 4/67, 2	
<input checked="" type="checkbox"/> Last Year	2/70 - loss.	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
<input checked="" type="checkbox"/> Year Before Last		<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

A-2.

14. How much were your total earnings last year? (Count both wages and self-employment income. If none, write "None") \$ 2,171 ²

15. How much have you earned so far this year? (If none, write "None") \$ 1970 ²
6,120 ⁺

16. (a) Check (✓) whether you are: ^{1971 - None}
☒ MARRIED (Whether living together or separated) ☐ WIDOWED ☐ DIVORCED ☐ SINGLE
(If you checked "MARRIED" or "WIDOWED," complete (b), (c), and (d) if appropriate.) (If you checked "DIVORCED" or "SINGLE" go on to item 18.)

(b) Enter your wife's maiden name or your husband's name	Date of Birth (If unknown, give age)	Date of Marriage	If husband or wife is age 62 or over or is filing for disability benefits, enter his or her Social Security No.
Loretta Seurlock	6/15/45	6/15/67	

(c) If your husband or wife is deceased, enter the date of death here _____ Date of Death _____

(d) If you are a married woman, was your husband receiving at least one-half of his support from you at the time you became unable to work because of your disabling condition, or is he receiving at least one-half of his support from you now? ☐ Yes ☐ No

17. Answer item 17 only if you are married AND your husband or wife is applying for benefits.

(a) Check (✓) whether your marriage was performed by:
Clergyman or authorized public official ☒, or other ☐ (Explain)

(b) Were you married before your present marriage? ☒ Yes ☐ No
(If "Yes," give the following information about each of your previous marriages.)

	To Whom Married	When (Month, day, and year)	Where (Enter name of city and State)
Previous marriage	The/ma. Ambrose	8/2/51	Sampson N12 forever has
	Divorce	11/1/51	Media, Pa
Previous marriage	None previous		

(Use "Remarks" space on back page for information about any other marriage.)

18. (a) Do you have ANY children (including natural children, adopted children, and stepchildren) who are now or were in the past 12 months UNMARRIED and

• UNDER AGE 18 ☒ Yes ☐ No

• AGE 18 TO 22 AND ATTENDING SCHOOL ☐ Yes ☒ No

• DISABLED (18 OR OVER AND DISABILITY BEGAN BEFORE AGE 18) ☐ Yes ☒ No

If you have children who may qualify for benefits under any of the above conditions, answer (b) and (c).

(b) Full Name of Child	Full Name of Child
Michelle McGilbray	

(c) Do you wish to apply on behalf of all the children named in item 18(b) for all insurance benefits payable to them under Title II of the Social Security Act, as amended? ☒ Yes ☐ No

If you are not applying for any child you name, enter the child's name under "Remarks" (back page of this form) and explain why you are not applying for such child. You may apply for a child even though you do not wish to be the payee for the child's benefits.

(Over)

A-3

19. Do you have a dependent parent who was receiving at least one-half of his or her support from you at the time shown in item 5(a) when you became unable to work because of your disability? ☐ Yes ☒ No

20. Do you authorize any physician, hospital, agency, or other organization to disclose to the Social Security Administration or to the State agency that may review this application or your continuing disability, any medical records or other information about your disability? ☒ Yes ☐ No

YOU MUST NOTIFY THE SOCIAL SECURITY ADMINISTRATION PROMPTLY IF:

- Your MEDICAL CONDITION IMPROVES so that you would be able to work, even though you have not yet returned to work.
- You GO TO WORK whether as an employee or a self-employed person.
- You apply for periodic benefits under any workmen's compensation law or plan.
- You are DISCHARGED FROM THE HOSPITAL if you are now hospitalized.

21. Do you agree to notify the Social Security Administration promptly if any of the above events occur? ☒ Yes ☐ No

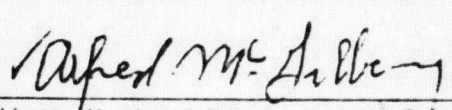
Remarks: (This space may be used for explaining any answers to the questions. If additional space is required, attach separate sheet.)

2. Burchynski Bakery, 179 Stanislaus St.
Buffalo, NY, 3/72 - 4/70

Queen Mary's Hotel, Cheektowatch, NY.
6/70 - 9/70

IMPORTANT INFORMATION. PLEASE READ CAREFULLY.—A claimant for disability insurance benefits is required to submit medical evidence showing the nature and extent of his disability during the time he alleges he was under a disability. If such evidence is not sufficient to arrive at a determination, he may be requested to have an independent medical examination at the expense of the Social Security Administration. Should Social Security obtain information useful to his physician for treatment, such information may be furnished to him.

I know that anyone who makes a false statement or representation of a material fact in an application or for use in determining a right to payment under the Social Security Act commits a crime punishable under Federal Law. I affirm that the above statements are true.

SIGNATURE OF WITNESSES		SIGNATURE OF APPLICANT	
If this application has been signed by mark (X), two witnesses who know the applicant must sign below, giving their full addresses.		Signature (First name, middle initial, last name) (Write in ink)	
1. Signature		SIGN HERE 	
Address (Number and street, City, State, and ZIP Code)		Mailing address (Number and street, Apt. No., P.O. Box, or Rural Route) 218 Bruce St.	
2. Signature		City and State Syracuse, NY	Zip Code 13224
Address (Number and street, City, State, and ZIP Code)		Date (Mo., day and year) 1/4/70	Telephone number 445-0297
		Enter name of county (if any) in which you now live Onondaga	

A-4



APPLICATION FOR CHILD'S INSURANCE BENEFITS
(For Children of Living Wage Earner or Self-Employed Person)

Form Approved
Budget Bureau No. 72-R0126

(Do not write in this space)

NOTICE—Whoever makes or causes to be made any false statement or representation of a material fact in an application or for use in determining a right to payment under the Social Security Act is subject to not more than a \$1,000 fine or 1 year of imprisonment, or both.

SYRACUSE, N. Y. 13203

JAN 4 1971

21101

SEA DISTRICT OFFICE

Enter Name of Wage Earner or Self-Employed Person (Herein referred to as the "Worker").

Alfred D. McGilbenny

Enter His Social Security Number

157 22 7334

Enter Your Full Name

11

I hereby apply, on behalf of the child or children listed in Item 1 below, for all insurance benefits payable to them under Title II of the Social Security Act, as amended. (If you are applying on your own behalf, answer the questions on this form with respect to yourself.)

1. Does the worker have ANY living children (including natural children, adopted children and stepchildren) who are now or were during any of the past 12 months UNMARRIED and:

- UNDER AGE 18
☒ Yes ☐ No

(List ALL such children in order of birth beginning with the oldest.)

- AGE 18 TO 22 AND ATTENDING SCHOOL
☐ Yes ☒ No

- DISABLED (age 18 or over and disability began before age 18)
☐ Yes ☒ No

CHECK
(✓)
SEX OF
CHILD

DATE OF
BIRTH
(Mo., day, yr.)

Check (✓) if
Child 18 or
Over is
Student or
Disabled

Check (✓) the Column
That Shows Child's
Relationship to Worker

M

F

Student

Disabled

Legitimate

Adopted

Stepchild

Other

FULL NAME OF CHILD

Michelle McGilbenny

CHILD'S SOCIAL SECURITY NUMBER

None

X

10/14/68

X

FULL NAME OF CHILD

CHILD'S SOCIAL SECURITY NUMBER

FULL NAME OF CHILD

CHILD'S SOCIAL SECURITY NUMBER

FULL NAME OF CHILD

CHILD'S SOCIAL SECURITY NUMBER

FULL NAME OF CHILD

CHILD'S SOCIAL SECURITY NUMBER

If you are not applying for any child you name, enter the child's name under "Remarks" (page 4 of this form) and explain why you are not applying for such child. You may apply for a child even though you do not wish be the payee for the child's benefits.

2. If any children in item 1 are stepchildren of the worker enter the date the worker married the natural parent.

Date of Marriage

3. If any children in item 1 are adopted children of the worker, enter below the name of each such child and the date the worker adopted him(her).

Name of Adopted Child	Date of Adoption

4. Have any children in Item 1 ever been adopted by someone other than the worker? ☐ Yes ☒ No
(If "Yes," enter the following information):

Name of Child	Date of Adoption

5. Have all of the children in item 1 lived with the above worker during each of the last 13 months (counting the present month)? ☒ Yes ☐ No
(If "No," enter the information requested below.)

Name of Child Who Did Not Live With The Worker In Each of The Last 13 Months	List Each Month In Which This Child Did Not Live With The Worker	Person With Whom Child Lived	
		Name and Address	Relationship to Child

6. Are all the children in item 1 now living in the same household with you? ☒ Yes ☐ No
(If "No," enter the following information about each child not living with you. If uncertain as to the whereabouts of any of these children, explain under "Remarks" on last page.)

Name of Child Not Living With You	Person With Whom Child Now Lives	
	Name and Address	Relationship to Child

7. Has anyone ever before filed an application with the Social Security Administration for monthly benefits on behalf of any child in item 1? ☐ Yes ☒ No
(If "Yes," enter below the name(s) and social security number(s) of the person(s) on whose earnings record any other claim was based.)

Name of Wage Earner or Self-Employed Person	Social Security Number (If unknown, so indicate)		

8. Has any child in item 1 ever been married? ☐ Yes ☒ No
(If "Yes," enter the information requested below.)

Name of Child	Date of Marriage (Month, Day, Year)
How Marriage Ended (If still married, write "Not Ended")	Date Marriage Ended (Month, Day, Year)

9. Do you understand that all payments made to you on behalf of a child must be spent for his present needs or (if not presently needed) saved for his future needs, and do you agree to use the benefits that way? ☒ Yes ☐ No
10. Do you agree to notify the Social Security Administration promptly when your address and/or the address of any child is changed or if you no longer have responsibility for the welfare and care of any child for whom you are filing? ☒ Yes ☐ No

If you are filing ONLY for a child age 18 or over who is disabled, you may omit items 11, 12, and 13 and go on to item 14. In all other cases, items 11, 12, and 13 must be answered.

Please read the following information before going on to Item 11.

Some or all of a child's benefits may not be payable if the child earns more than \$1,680 in a year.* If he earns more than \$1,680, benefits may be withheld for any month in which he earns more than \$140 in wages or performs substantial services in self-employment. Count the gross wages (not the take-home pay) earned during the year, regardless of when the wages are paid. Count the net earnings from self-employment (after deducting allowable business expenses). Include all earnings from employment and self-employment, whether or not the work is covered by social security.

11. (a) Do you expect the total earnings of any child to be more than \$1,680 this year? (Count all earnings beginning with the first of this year and all anticipated earnings through the end of this year.) ☐ Yes ☒ No
(If "Yes," answer (b). If "No," go on to item 12.)

(b) Name of Child Who Expects To Earn Over \$1,680 This Year	Expected Earnings	List Each Month (including the present month) That Child Did Not Earn More Than \$140 In Employment and Did Not Perform Substantial Services In Self-Employment
	\$	
	\$	
	\$	

12. (a) Did any child earn more than \$1,680 last year? **NA** ☐ Yes ☐ No
(If "Yes," answer (b). If "No," go on to item 13.)

(b) Name of Child Who Earned Over \$1,680 Last Year	Total Earnings of Child	List Each Month That Child Did Not Earn More Than \$140 In Employment and Did Not Perform Substantial Services In Self-Employment
	\$	
	\$	
	\$	

An annual report of earnings must be filed with the Social Security Administration within 3 months and 15 days after the end of any year in which any child earned more than \$1,680 and received some benefit payment for a month in that year. FAILURE TO REPORT MAY RESULT IN THE LOSS OF ONE OR MORE MONTHLY BENEFITS.

13. Do you agree to file the annual report of earnings when required? ☒ Yes ☐ No

* The yearly period referred to in this and subsequent items is the same 12-month period used in figuring income taxes. If any of the children for whom you are filing use a fiscal year (one that does not end on December 31), enter here the name of the child and the month the fiscal year ends.

Name of Child and Month Fiscal Year Ends

(Over)

A-2

YOU MUST NOTIFY THE SOCIAL SECURITY ADMINISTRATION PROMPTLY IF:

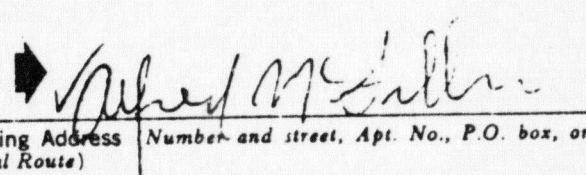
- Any child MARRIES, DIES, or is ADOPTED
- A student, age 18 to 22, STOPS ATTENDING SCHOOL, REDUCES HIS SCHOOL ATTENDANCE BELOW FULL-TIME, CHANGES SCHOOLS, or IS PAID BY HIS EMPLOYER TO ATTEND SCHOOL.
- A disabled child, age 18 or over, DISABLING CONDITION IMPROVES, GOES TO WORK, or if now hospitalized is DISCHARGED FROM THE HOSPITAL.

Benefits may end if any of the above events occur. However, there are certain exceptions which are explained in the informational booklet which you will receive. You must report each of these events even if you believe an exception applies. We will advise you whether additional evidence is needed and how the benefits may be affected.

14. Do you agree to notify the Social Security Administration promptly if any of the above events occur, and to promptly return any benefit check you receive for a child which is not due? ☒ YES ☐ No

Remarks: (You may use this space for any explanations. If you need more space, attach a separate sheet.)

I know that anyone who makes a false statement or representation of a material fact in an application or for use in determining a right to payment under the Social Security Act commits a crime punishable under Federal Law. I affirm that the above statements are true.

SIGNATURE OF WITNESSES		SIGNATURE OF APPLICANT	
If this application has been signed by mark (X), two witnesses who know the applicant must sign below, giving their full addresses.		Signature (First name, middle initial, last name) (Write in ink)	
1. Signature		Sign Here 	
Address (Number and Street, City, State and ZIP Code)		Mailing Address (Number and street, Apt. No., P.O. box, or Rural Route)	
2. Signature		City and State	ZIP Code
Address (Number and Street, City, State and ZIP Code)		Date (Mo., day and year) 11/4/71	Telephone number
Enter name of county (if any) in which you now live			



APPLICATION FOR CHILD'S INSURANCE BENEFITS
(For Children of Living Wage Earner or Self-Employed Person)

(Do not write in this space)

NOTICE—Whoever makes or causes to be made any false statement or representation of a material fact in an application or for use in determining a right to payment under the Social Security Act is subject to not more than a \$1,000 fine or 1 year of imprisonment, or both.

SYRACUSE, N. Y. 13203

MAR 10 1972

21101

SSA DISTRICT OFFICE

Enter Name of Wage Earner or Self-Employed Person (Herein referred to as the "Worker").

Enter Your Full Name

Enter His Social Security Number

Alfred D. McGilberry

157 22 7334HA

I hereby apply, on behalf of the child or children listed in Item 1 below, for all insurance benefits payable to them under Title II of the Social Security Act, as amended. (If you are applying on your own behalf, answer the questions on this form with respect to yourself.)

1. Does the worker have ANY living children (including natural children, adopted children and stepchildren) who are now or were during any of the past 12 months UNMARRIED and:

- UNDER AGE 18
☒ Yes ☐ No

(List ALL such children in order of birth beginning with the oldest.)

- AGE 18 TO 22 AND ATTENDING SCHOOL
☐ Yes ☒ No

- DISABLED (age 18 or over and disability began before age 18)
☐ Yes ☒ No

CHECK
(✓)
SEX OF
CHILD

M F

DATE OF
BIRTH
(Mo., day, yr.)

Check (✓) if
Child 18 or
Over is
Student or
Disabled

Check (✓) the Column
That Shows Child's
Relationship to Worker

Student

Disabled

Legitimate

Adopted

Stepchild

Other

FULL NAME OF CHILD

CHILD'S SOCIAL SECURITY NUMBER

FULL NAME OF CHILD

CHILD'S SOCIAL SECURITY NUMBER

FULL NAME OF CHILD

CHILD'S SOCIAL SECURITY NUMBER

FULL NAME OF CHILD

CHILD'S SOCIAL SECURITY NUMBER

FULL NAME OF CHILD

CHILD'S SOCIAL SECURITY NUMBER

If you are not applying for any child you name, enter the child's name under "Remarks" (page 4 of this form) and explain why you are not applying for such child. You may apply for a child even though you do not wish be the payee for the child's benefits.

2. If any children in item 1 are stepchildren of the worker enter the date the worker married the natural parent.

Date of Marriage

GOVERNMENT
EXHIBIT

3. If any children in item 1 are adopted children of the worker, enter below the name of each such child and the date the worker adopted him(her).

Name of Adopted Child	Date of Adoption

4. Have any children in Item 1 ever been adopted by someone other than the worker? ☐ Yes ☒ No
(If "Yes," enter the following information):

Name of Child	Date of Adoption

5. Have all of the children in item 1 lived with the above worker during each of the last 13 months (counting the present month)? ☒ Yes ☐ No
(If "No," enter the information requested below.)

Name of Child Who Did Not Live With The Worker In Each of The Last 13 Months	List Each Month In Which This Child Did Not Live With The Worker	Person With Whom Child Lived	
		Name and Address	Relationship to Child

6. Are all the children in item 1 now living in the same household with you? ☒ Yes ☐ No
(If "No," enter the following information about each child not living with you. If uncertain as to the whereabouts of any of these children, explain under "Remarks" on last page.)

Name of Child Not Living With You	Person With Whom Child Now Lives	
	Name and Address	Relationship to Child

7. Has anyone ever before filed an application with the Social Security Administration for monthly benefits on behalf of any child in item 1? ☐ Yes ☒ No
(If "Yes," enter below the name(s) and social security number(s) of the person(s) on whose earnings record any other claim was based.)

Name of Wage Earner or Self-Employed Person	Social Security Number (If unknown, so indicate)

8. Has any child in item 1 ever been married? ☐ Yes ☒ No
(If "Yes," enter the information requested below.)

Name of Child	Date of Marriage (Month, Day, Year)
How Marriage Ended (If still married, write "Not Ended")	Date Marriage Ended (Month, Day, Year)

9. Do you understand that all payments made to you on behalf of a child must be spent for his present needs or (if not presently needed) saved for his future needs, and do you agree to use the benefits that way? ☒ Yes ☐ No
10. Do you agree to notify the Social Security Administration promptly when your address and/or the address of any child is changed or if you no longer have responsibility for the welfare and care of any child for whom you are filing? ☒ Yes ☐ No

If you are filing ONLY for a child age 18 or over who is disabled, you may omit items 11, 12, and 13 and go on to item 14. In all other cases, items 11, 12, and 13 must be answered.

Please read the following information before going on to Item 11.

Some or all of a child's benefits may not be payable if the child earns more than \$1,680 in a year.* If he earns more than \$1,680, benefits may be withheld for any month in which he earns more than \$140 in wages or performs substantial services in self-employment. Count the gross wages (not the take-home pay) earned during the year, regardless of when the wages are paid. Count the net earnings from self-employment (after deducting allowable business expenses). Include all earnings from employment and self-employment, whether or not the work is covered by social security.

11. (a) Do you expect the total earnings of any child to be more than \$1,680 this year? (Count all earnings beginning with the first of this year and all anticipated earnings through the end of this year.) ☐ Yes ☒ No
(If "Yes," answer (b). If "No," go on to item 12.)

(b) Name of Child Who Expects To Earn Over \$1,680 This Year	Expected Earnings	List Each Month (including the present month) That Child Did Not Earn More Than \$140 In Employment and Did Not Perform Substantial Services In Self-Employment
	\$	
	\$	
	\$	

12. (a) Did any child earn more than \$1,680 last year? ☐ Yes ☒ No
(If "Yes," answer (b). If "No," go on to item 13.)

(b) Name of Child Who Earned Over \$1,680 Last Year	Total Earnings of Child	List Each Month That Child Did Not Earn More Than \$140 In Employment and Did Not Perform Substantial Services In Self-Employment
	\$	
	\$	
	\$	

An annual report of earnings must be filed with the Social Security Administration within 3 months and 15 days after the end of any year in which any child earned more than \$1,680 and received some benefit payment for a month in that year. FAILURE TO REPORT MAY RESULT IN THE LOSS OF ONE OR MORE MONTHLY BENEFITS.

13. Do you agree to file the annual report of earnings when required? ☒ Yes ☐ No

* The yearly period referred to in this and subsequent items is the same 12-month period used in figuring income taxes. If any of the children for whom you are filing use a fiscal year (one that does not end on December 31), enter here the name of the child and the month the fiscal year ends.

Name of Child and Month Fiscal Year Ends

(Over)

A-11

YOU MUST NOTIFY THE SOCIAL SECURITY ADMINISTRATION PROMPTLY IF:

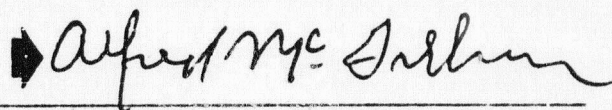
- Any child MARRIES, DIES, or is ADOPTED
- A student, age 18 to 22, STOPS ATTENDING SCHOOL, REDUCES HIS SCHOOL ATTENDANCE BELOW FULL-TIME, CHANGES SCHOOLS, or IS PAID BY HIS EMPLOYER TO ATTEND SCHOOL.
- A disabled child, age 18 or over, DISABLING CONDITION IMPROVES, GOES TO WORK, or if now hospitalized is DISCHARGED FROM THE HOSPITAL.

Benefits may end if any of the above events occur. However, there are certain exceptions which are explained in the informational booklet which you will receive. You must report each of these events even if you believe an exception applies. We will advise you whether additional evidence is needed and how the benefits may be affected.

14. Do you agree to notify the Social Security Administration promptly if any of the above events occur, and to promptly return any benefit check you receive for a child which is not due? ☒ YES ☐ No

Remarks: (You may use this space for any explanations. If you need more space, attach a separate sheet.)

I know that anyone who makes a false statement or representation of a material fact in an application or for use in determining a right to payment under the Social Security Act commits a crime punishable under Federal Law. I affirm that the above statements are true.

SIGNATURE OF WITNESSES		SIGNATURE OF APPLICANT	
If this application has been signed by mark (X), two witnesses who know the applicant must sign below, giving their full addresses.		Signature (First name, middle initial, last name) (Write in ink)	
1. Signature		Sign Here 	
Address (Number and Street, City, State and ZIP Code)		Mailing Address (Number and street, Apt. No., P.O. box, or Rural Route) 218 Bruce St.	
2. Signature		City and State Syracuse N.Y.	ZIP Code 13224
Address (Number and Street, City, State and ZIP Code)		Date (Mo., day and year) 4-5-1924	Telephone number 445-1924
		Enter name of county (if any) in which you now live DeWitt	

A-12

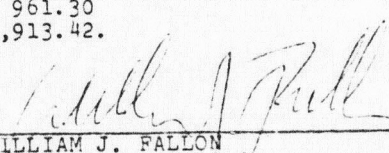
IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	
	:	
V.	:	Criminal
	:	
ALFRED D. MC GILBERRY,	:	<u>No. 76-CR-9</u>
	:	
Defendant.	:	<u>STIPULATION</u>

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-captioned proceeding that the defendant, ALFRED D. MC GILBERRY worked at Sam Dell's Dodge Corp., Syracuse, New York, from August 23, 1972, through December, 1973, and that he earned the following wages:

<u>Month</u>	<u>Earnings</u>
August, 1972	\$ 76.00
September, 1972	1,009.39
October, 1972	1,694.78
November, 1972	1,103.73
December, 1972	825.50
January, 1973	1,771.08
February, 1973	1,851.94
March, 1973	2,127.95
April, 1973	1,921.99
May, 1973	2,074.00
June, 1973	1,945.34
July, 1973	3,025.74
August, 1973	1,117.14
September, 1973	877.22
October, 1973	1,384.87
November, 1973	961.30
December, 1973.	2,913.42.

Dated: July ____, 1976



WILLIAM J. FALLON
Attorney for Defendant.

JAMES M. SULLIVAN, JR.
United States Attorney for the
Northern District of New York

By: _____
Arthur A. Chalenski, Jr.
Assistant U. S. Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

V.

ALFRED D. MCGILBERRY,

Defendant.

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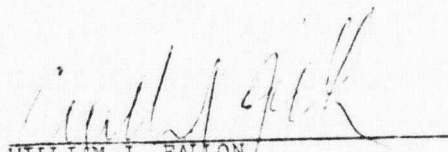
Criminal
No. 76-CR-9

STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-captioned proceeding that the defendant, ALFRED D. MCGILBERRY, worked at Syracuse University, Syracuse, New York, during the following months and that he earned the wages respectively set forth:

<u>Month</u>	<u>Earnings</u>
March, 1972	\$ 505.45
April, 1972	791.66
May, 1972	395.83.

Dated: July ____, 1976


WILLIAM J. FALLON
Attorney for Defendant.

JAMES M. SULLIVAN, JR.
United States Attorney for the
Northern District of New York

By _____
Arthur A. Chalenski, Jr.
Assistant U. S. Attorney

A-14

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

V.

ALFRED D. MCGILBERRY,

Defendant. :

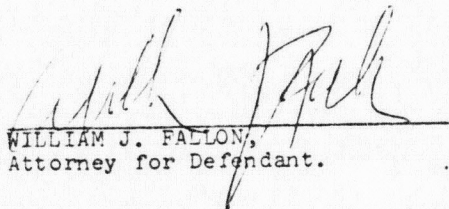
Criminal
No. 76-CR-9

STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-captioned proceeding that the defendant, ALFRED D. MCGILBERRY, worked at S. M. Flickinger Company, Inc., Syracuse, New York, during the following months and that he earned the wages respectively set forth:

<u>Month</u>	<u>Earnings</u>
April, 1971	\$ 479.54
May, 1971	778.83
June, 1971	714.52
July, 1971	838.72
August, 1971	206.50
September, 1971	781.38
October, 1971	661.96
November, 1971	323.76
December, 1971	432.25.

Dated: July, 2, 1976


WILLIAM J. FALLON,
Attorney for Defendant.

JAMES M. SULLIVAN, JR.
United States Attorney for the
Northern District of New York

By: _____
Arthur A. Chalenski, Jr.
Assistant U. S. Attorney

A-15

A-16

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

V.

ALFRED D. MC GILBERRY,

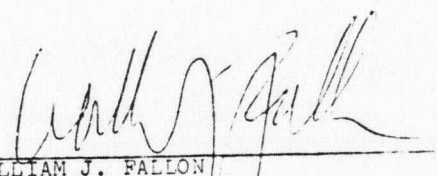
Defendant.

:
:
: Criminal
: No. 76-CR-9

:
:
: STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and between the parties
to the above-captioned proceeding that the defendant, ALFRED D.
McGILBERRY worked at the Melbourne Hotel, Inc., Ellenville, New York,
during January, 1971, and that he earned wages of \$117.50.

Dated: July 13, 1976



WILLIAM J. FALLON
Attorney for Defendant

JAMES M. SULLIVAN, JR.
United States Attorney for the
Northern District of New York

By: _____
Arthur A. Chalenski, Jr.
Assistant U. S. Attorney

A-17

REPORT OF CONTACT

(USE INK OR TYPEWRITER)

ACCOUNT NUMBER (and symbol)

1334

REVIEWING OFFICE

NAME OF WAGE EARNER OR SELF-EMPLOYED PERSON

TO: NY P BIR CH SF DBS KC DFC SA

Alfred Mc Gilberry

PERSON(S) CONTACTED AND ADDRESS(ES):

☒ WE OR SE PERSON

☐ OTHER (Specify)

CONTACT MADE:

☐ DO ☐ BO ☐ CS ☐ HOME ☒ PHONE:

☐ OTHER (Specify)

DATE OF CONTACT

2/79

SUBJECT:

Qnts: 315-445-0297

Purpose: When did W/E stop working? Has he attended clinic since 1/80? When was last chest X-ray taken? Last pulmonary function tests + blood gas studies?

Facts: Mr. Mc Gilberry said he first stopped working at a bakery in April 1970 because he had to travel to Buffalo. After that he kept looking for work + then started working again in June 1970. Work ended at that hotel in 9/80 because this was seasonal work. Claimant then went to work at another bakery + worked up until 12/15/70. Work stopped only then because of impairment. Since 12/70, W/E has attended clinic at VAH at least once a week + sometimes 2 or 3 x a week. He had attended clinic about once a month, prior to Dec. Chest X-ray have been taken on every visit. Dr. Klingner sees claimant at the clinic. Claimant is taking medication. Last

SIGNATURE

C. Dmowski

DISTRICT OFFICE

☐ CR

☐ FR

☐ SR

☐ CLAIMS CLERICAL

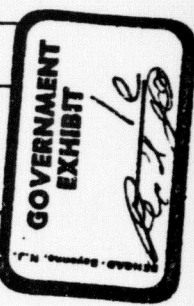
☐ OTHER (Specify)

DATE OF REPORT

2/79

PAGE

1 of 2



DO NOT WRITE IN MARGIN

REPORT OF CONTACT

(USE INK OR TYPEWRITER)

ACCOUNT NUMBER (and symbol)

REVIEWING OFFICE

NAME OF WAGE EARNER OR SELF-EMPLOYED PERSON

TO: NY P BIR CH SF DBS KC DFC SA

PERSON(S) CONTACTED AND ADDRESS(ES):

☐ WE OR SE
PERSON

☐ OTHER
(Specify)

CONTACT MADE:

☐ DO

☐ BO

☐ CS

☐ HOME

☐ PHONE:

☐ OTHER
(Specify)

DATE OF CONTACT

SUBJECT:

Time he was at clinic was yesterday. Pulmonary
Function tests were taken about 2 weeks ago.
Claimant's job as laborer required lifting about 50
lbs. or more + standing all day.

Conclusions: Although claimant stopped
work from 4/70 to 6/70, this was only because
of traveling + during that time he kept looking
for work. He switched jobs in 9/70 because job
was seasonal. Claimant finally stopped working
because of ailment on 12/15/70, therefore that
is the earliest onset that can be established.

N/A: Contact V.A.H.

SIGNATURE

DISTRICT OFFICE

☐ CR

☐ FR

☐ SR

☐ CLAIMS
CLERICAL

☐ OTHER (Specify)

DATE OF REPORT

PAGE

OF 2

REPORT OF CONTACT

(Use ink or typewriter)

ACCOUNT NUMBER AND SYMBOL

157-22-7334

REVIEWING OFFICE

NAME OF WAGE EARNER OR SELF-EMPLOYED PERSON

TO: NY P BIR CH KC SF DBS DIO SA

Alfred McGilberry

PERSON(S) CONTACTED AND ADDRESSES:

☒ WE OR SE PERSON ☐ OTHER (Specify)

CONTACT MADE:

☒ DO ☐ BO ☐ CS ☐ HOME ☐ PHONE:☐ OTHER

972 NOV -

DATE OF CONTACT

SUBJECT

Claimant indicated he started work around 3/24/71 and worked on and off til 12/71. He worked for the Super Super market in Liverpool - says he doesn't think he ever put in a full weeks work. He acted in his usual capacity as a Baker. The job was supposed to be 8 proper days

5 days per week at 175^{cents}. But w/e says the flour etc aggravated his condition to such an extent he had a great deal of sick time. His Dr. told him that if he wanted to live, he wouldn't go into a Bakery again. Claimant is a professional who commands quite a bit of pay for his skill.

Claimant said we could get in touch with Robert Smyth at Super Super to verify illness.

SIGNATURE

B. Vanner
Syracuse, NY

DISTRICT OFFICE

☒ CR ☐ FR ☐ SR ☐ CLAIMS CLERICAL☐ OTHER (Specify)

DATE OF REPORT

11/21/72

PAGE OF

WORK ACTIVITY REPORT

Complete for all initial cases with work activity after onset, and in continuing disability cases with work activity. (See CM 6400ff, 5185ff)

SOCIAL SECURITY NUMBER

157-22-7334

DATE

9/29/72

OFFICE

Lawrence

NAME AND SOCIAL SECURITY NUMBER OF DISABLED PERSON (If other than W/E's)

WAGE EARNER'S NAME

Alfred McHilberry

PERSON CONTACTED

☐ CLAIMANT

☐ OTHER (If other, show name, address and relationship to claimant)

INTERVIEWER'S SIGNATURE

☒ CR

☐ FR

☐ OTHER (Specify)

R. Vanner

PART I - WORK AS AN EMPLOYEE

	DATES WORKED		AVERAGE HOURS PER DAY	AVERAGE DAYS PER WEEK
	STARTED (month, day, year)	ENDED (month, day, year)		
A. WORK ATTENDANCE	1 / 1 / 71	1 / 1	one day	
	1 / 1	1 / 1		
	1 / 1	1 / 1		

	STARTING WAGES	PER HOUR	PER DAY	PER MONTH	ENDING WAGES	PER HOUR	PER DAY	PER MONTH
		B. EARNINGS		\$56.00				
	STARTING WAGES				ENDING WAGES			
	STARTING WAGES				ENDING WAGES			
TIPS								
"IN KIND" (explain)								
OTHER (explain)								
C. EMPLOYER	NAME, ADDRESS, PHONE NUMBER OF EMPLOYER Melbourne Hotel Briggs Highway, Ellenville, N.Y.							
D. HOW JOB WAS OBTAINED	Claimant was called							
E. WORK STOPPAGE	CLAIMANT STOPPED WORKING <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO (If "Yes," give date and explain reason for work stoppage) got sick							

CHECK IF ONE OF THE FOLLOWING APPLIES (If one of the items is checked, do not complete the remainder of Part I)

- ☒ Claimant worked 3 months or less and stopped working because of impairment, or removal of special conditions.
- ☐ Claimant's earnings as an employee do not exceed \$90 per month.
- ☐ Claimant works in sheltered employment (e.g., sheltered workshop, VA domiciliary) and his earnings do not exceed \$140 per month.
- ☐ Claimant's earnings as an employee exceed \$200 per month and there is no evidence of "substantial" subsidy.
- ☐ In initial case, claimant returned to a job that is described in Section VI (Principal Job) on SSA-401 and there is no change in duties, or special conditions.

WORK ACTIVITY REPORT		SOCIAL SECURITY NUMBER 157-22-7334	DATE 9/29/72
Complete for all initial cases with work activity after onset, and in continuing disability cases with work activity. (See CM 6400ff, 5185ff)		OFFICE <i>Lyons</i>	NAME AND SOCIAL SECURITY NUMBER OF DISABLED PERSON (If other than W/E's) -
		WAGE EARNER'S NAME Alfred M. Gylberry	
PERSON CONTACTED <input checked="" type="checkbox"/> CLAIMANT <input type="checkbox"/> OTHER (If other, show name, address and relationship to claimant)			
INTERVIEWER'S SIGNATURE <input type="checkbox"/> CR <input type="checkbox"/> PR <input type="checkbox"/> OTHER (Specify) <i>B. Vamer</i>			

PART I - WORK AS AN EMPLOYEE

A. WORK ATTENDANCE	DATES WORKED		AVERAGE HOURS PER DAY	AVERAGE DAYS PER WEEK				
	STARTED (month, day, year)	ENDED (month, day, year)						
	3074 , 71, 12, 71		<i>tried 8</i>	<i>tried 5</i>				
	<i>off & on</i>		<i>usually 3-4</i>	<i>maybe around 4</i>				
B. EARNINGS	STARTING WAGES	PER HOUR	PER DAY	PER MONTH	ENDING WAGES	PER HOUR	PER DAY	PER MONTH
	- 175							
	STARTING WAGES				ENDING WAGES			
	STARTING WAGES				ENDING WAGES			
	STARTING WAGES				ENDING WAGES			
	TIPS							
	"IN KIND" (explain)							
	OTHER (explain)							
C. EMPLOYER	NAME, ADDRESS, PHONE NUMBER OF EMPLOYER							
	<i>Super Super S.M. Flickinger Co. I P.O. Box 2085, Buffalo, NY.</i>							
D. HOW JOB WAS OBTAINED	<i>Claimant known as a baker as called Aug</i>							
E. WORK STOPPAGE	CLAIMANT STOPPED WORKING <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO (If "Yes," give date and explain reason for work stoppage)							
	<i>couldn't keep up - cut too much eventually let go</i>							

CHECK IF ONE OF THE FOLLOWING APPLIES (If one of the items is checked, do not complete the remainder of Part I)

1. ☐ Claimant worked 3 months or less and stopped working because of impairment, or removal of special conditions.
2. ☐ Claimant's earnings as an employee do not exceed \$90 per month.
3. ☐ Claimant works in sheltered employment (e.g., sheltered workshop, VA domiciliary) and his earnings do not exceed \$140 per month.
4. ☒ Claimant's earnings as an employee exceed \$200 per month and there is no evidence of "substantial" subsidy.
5. ☐ In initial case, claimant returned to a job that is described in Section VI (Principal Job) on SSA-401 and there is no change in duties, or special conditions.

WORK ACTIVITY REPORT Complete for all initial cases with work activity after onset, and in continuing disability cases with work activity. (See CM 6400ff, 5185ff)	SOCIAL SECURITY NUMBER <div style="font-size: 1.2em; font-family: monospace;">157-22-7334</div>
WAGE EARNER'S NAME <div style="font-size: 1.2em; font-family: cursive;">Alfred McElberry</div>	DATE <div style="font-size: 1.2em; font-family: cursive;">9/29/72</div>
PERSON CONTACTED <div style="font-size: 1.2em; font-family: cursive;">Alfred McElberry</div>	OFFICE <div style="font-size: 1.2em; font-family: cursive;">Lynchburg</div>
NAME AND SOCIAL SECURITY NUMBER OF DISABLED PERSON (If other than W/E's) <div style="font-size: 1.2em; font-family: cursive;">[Blank]</div>	
<input checked="" type="checkbox"/> CLAIMANT <input type="checkbox"/> OTHER (If other, show name, address and relationship to claimant)	

INTERVIEWER'S SIGNATURE ☐ CR ☐ FR ☐ OTHER (Specify)

B. Vanier

PART I - WORK AS AN EMPLOYEE

	DATES WORKED		AVERAGE HOURS PER DAY	AVERAGE DAYS PER WEEK
	STARTED (month, day, year)	ENDED (month, day, year)		
A. WORK ATTENDANCE	1 / 1 / 71	2 days	-	-
	/ /	/ /		
	/ /	/ /		

B. EARNINGS	STARTING WAGES	PER HOUR	PER DAY	PER MONTH	ENDING WAGES	PER HOUR	PER DAY	PER MONTH
		\$ 60						

TIPS

"IN KIND" (explain)

OTHER (explain)

C. EMPLOYER	NAME, ADDRESS, PHONE NUMBER OF EMPLOYER
	Goldman 201 350 Pleasant Way, West Orange NJ.

D. HOW JOB WAS OBTAINED	
	Claimant's friend

E. WORK STOPPAGE	CLAIMANT STOPPED WORKING <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO (If "Yes," give date and explain reason for work stoppage)
	got sick

CHECK IF ONE OF THE FOLLOWING APPLIES (If one of the items is checked, do not complete the remainder of Part I)

1. ☒ Claimant worked 3 months or less and stopped working because of impairment, or removal of special conditions.
2. ☐ Claimant's earnings as an employee do not exceed \$90 per month.
3. ☐ Claimant works in sheltered employment (e.g., sheltered workshop, VA domiciliary) and his earnings do not exceed \$140 per month.
4. ☐ Claimant's earnings as an employee exceed \$200 per month and there is no evidence of "substantial" subsidy.
5. ☐ In initial case, claimant returned to a job that is described in Section VI (Principal Job) on SSA-401 and there is no change in duties, or special conditions.



**REPORT OF CONTINUING
DISABILITY INTERVIEW**
(Write Legibly)

OFFICE Lynbrook
CONTACT MADE
☒ IN PERSON
☐ TELEPHONE

DATE 9/29/72
PLACE OF CONTACT
☒ DO ☐ CS
☐ HOME ☐ OTHER

WAGE EARNER'S NAME Alfred Mc Guffery ACCOUNT NUMBER 157-22-7334 CLAIMANT'S NAME (when claimant is not wage earner) Alfred
PERSON(S) CONTACTED ☒ CLAIMANT ☐ OTHER (If other, show name, address and relationship to claimant)

INTERVIEWER'S SIGNATURE B. Vaner ☒ CR ☐ FR
☐ OTHER

I. MEDICAL CARE AND TREATMENT

Has the claimant been examined, treated, or hospitalized since the last application or last continuing disability investigation? ☒ YES ☐ NO (If "Yes," complete the next item.)

Identify all sources that have treated or examined the claimant since the last application or continuing disability investigation, whichever is later.

NAME, ADDRESS, AND PHONE OF PHYSICIAN, HOSPITAL OR CLINIC	DATES WHEN CLAIMANT SEEN
<u>J. A.</u>	<u>6+7/72</u>
<u>800 Irving Ave.</u>	
<u>Lynbrook, N.Y.</u>	
<u>13210</u>	
<u>also outpatient until 9/21/72</u>	
<u>Told claimant if he wants to live not to go into a bakery any longer. - diagnosed possible T.B. Daily medication - now 20 mg from 5 mg.</u>	
<u>Confinement June, July, + part of August.</u>	

Describe treatment and limitations placed by the claimant's physician.

Describe periods of home confinement

- Dates confined
- Causative condition

II. PROGRESSION OF CONDITION

If yes, describe fully all changes in condition (with dates) since last interview.

Have there been any changes in symptoms, physical limitations, or activities since the last interview? ☒ YES ☐ NO

Doc says that the condition is increasing in severity according to claimant. If he stays home & does nothing for 2 months then his OK for a month. Any activity causes aggravation.

III. CURRENT CONDITION

Any exertion causes extreme fatigue. Can feel good at one pm & feel badly at two. Get continuous chest pain - great amount of coughing at night.

Describe in the words of the claimant how his condition currently interferes with his ability to work.

IV. DAILY ACTIVITIES

Usually goes to bed at 7:30 pm. - Reads & watches T.V. during the day. Has been offered many jobs. Hire until they take "picture of my chest". Stay inside most of day.

Describe only the activities of a typical day that have changed since they were last reported.

- Physical
- Mental
- Contact with others

Care for his personal needs unless having an attack - coughs until breathless.

Describe assistance required in caring for personal needs.

V. EFFORTS TO WORK - Has the claimant performed any work since the established onset date that is not described in the file? ☒ YES ☐ NO (If "Yes", complete an OA-D821 for each job)

VI. VOCATIONAL REHABILITATION - Is the beneficiary being considered for or receiving services from or through the State Vocational Rehabilitation Agency?

☒ YES ☐ NO (If "Yes", record (1) the name and address of the counselor and servicing office, (2) the type of services being received.)

Contacted claimant a year ago & said they'd get in touch & claimant had not heard since.

VII. OBSERVATIONS - Are the alleged impairment(s) observable? ☐ YES ☒ NO

Sight	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Hearing	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Comprehending	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Reading	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Use of hands and arms	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Breathing	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Responding	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Writing	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Sitting	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		Speaking	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Walking	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
				Other	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Check each item to the left to indicate whether or not any difficulty was observed.

Claimant says he has a bit of difficulty with his sight & hearing - it wasn't obvious during the interview. A glib type of person - says he wants to work & doesn't want social security - Neatly dressed, appeared intelligent.

Describe fully General appearance
• Behavior
• Outward attitude
• Circumstances surrounding the interview
• All "Yes" checked items above.

(If Additional Space is Needed, Use Form OAC-5002.)



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
BALTIMORE, MARYLAND 21241

181

REFER TO DI:CE

BUREAU OF
DISABILITY INSURANCE



Date 11-15-73

157-22-7334
Social Security Number

Our records show:

☒ That you have worked since 3/72
☐ \$ _____ has been reported to your social security record
for the period beginning _____.

As you were notified, your benefits may be stopped if you are again able to do substantial gainful work. Your medical condition may have improved enough for you to do this. But even if your condition has not improved your work may show that you now have the ability to do substantial gainful work.

The amount of your earnings is important in determining whether you are able to engage in substantial gainful work. The general rule is that if your earnings average more than \$140 a month (your pay before payroll deductions), you are performing substantial gainful work. Unless you submit information that establishes that you do not have the ability to engage in substantial gainful work, a determination will be made that you are no longer under a disability and your benefits will be terminated.

Please answer the questions on the next three pages. Sign your name at the bottom of the last page. In order to prevent possible overpayments of benefits to you return the form promptly. Please use the postage-free envelope enclosed. Unless this form is returned within the next 10 days your benefits may be suspended based on the information already in your file. If you need more time please let us know.

If you have any questions, or need help in filling out the form, please telephone or visit any social security office. The people there will be happy to help you. You can find the telephone number and address in the telephone directory listed under "Social Security Administration," or you can ask at your local post office. If you visit the social security office, please take this letter with you.

Sincerely yours,

C. C. Hall

C. C. Hall
Assistant Director

Enclosure:
Pre-Addressed Envelope

A-26

REPORT OF WORK ACTIVITY-CONTINUING DISABILITY

I understand that this report will be used to determine whether to continue or to stop my disability cash benefits and that evidence of continuing entitlement with respect to all matters must be submitted promptly, otherwise my benefits may be suspended based on evidence already in file. Also, I understand that if the work as I describe it does not establish that I am unable to engage in substantial gainful work activity, I will be found to be no longer under a disability and my benefits will be terminated.

1. Have you worked at any time since the date shown in the first paragraph of the preceding page?

☒ Yes If "yes", be sure to answer all the following questions. If any question does not apply to you, please explain in the space for remarks (number 10 on page 4)

NOTE:

☐ No. If "no", skip questions 2 to 8 and go to question 9 page 4. (If earnings have been reported to your social security record - see amount entered in the first paragraph of the preceding page but you have not worked, please explain in the space for remarks number 10 on page 4. For example state if the amount reported represents sick pay, vacation pay, etc.) If you cannot account for the reported earnings, please telephone or visit your social security office.

2. Please furnish the information requested about your present or most recent employer. Use paragraph 7 on page 3 to list any other employers you worked for since the date shown in the first paragraph of the preceding page.

NAME OF EMPLOYER

Sam Dell Dodge

EMPLOYER'S ADDRESS

1001 W Genesee St Syracuse NY.

DATE YOU STARTED WORKING FOR THIS EMPLOYER

MONTH

9

DAY

XX

YEAR

72

3. My total earnings (before payroll deductions) are

Per Week \$ 56 salary + commissions Per Month \$ _____ or Per Hour \$ _____

I am working 36 - 42 hours per week or 6-7 per day.

4. Since you started working for this employer, have there been any months in which your total monthly earnings (before any deductions) were \$50 or less?

☒ No ☐ Yes If "yes", list each month and the amount earned that month.

5. Are you still working for this employer? ☒ Yes ☐ No

If no, when did you stop working for this employer?

MONTH

DAY

YEAR

Explain why you stopped working

6.

A. What is your Job Title?

Car Salesman

B. Briefly describe your duties

Talk to people & sell cars
 keep records of auto finance
 etc.

7. If you have worked for other employers since the date shown in the letter on top of this form please furnish the following information for each employer:

(a) Name of employer

(b) Address of employer

(c) Dates of employment

(d) Earnings per month before deductions

(e) Any months where you earned \$50 or less

(Use paragraph 10 on page 4 if you need additional space for describing work for other employers.)

8. (a) Has your doctor told you to limit your activities in any way?

☐ No ☒ Yes ☐ Did not say

(b) If "Yes", give the name of the doctor and what he told you about limiting your activities.

Told me not to work - I returned
 against his orders

(c) When did your doctor tell you this?

11/73 on my last visit
 Tells me the same thing each visit

(d) Does your impairment affect your ability to do your work?

☐ No ☒ Yes (If yes, explain how)

From time to time
 have difficulty breathing
 & dizzy spells

9. Are you receiving services from or through the State vocational rehabilitation agency?

☒ No ☐ Yes If "Yes," give

Name and address of servicing rehabilitation office and counselor.

10. Remarks: Use the space below for explanation of question number one. Also, enter here any additional information that you believe is important and will assist in the review of your continuing entitlement to social security disability benefits. (If you need more space, use a separate sheet of paper. Also, if you wish, you may attach any evidence that shows your current condition.)

In 3/72 → 4/72 I worked for
Syracuse University Syracuse
NY I earned a total of
\$ 834.95 (over \$50 3/72 & 4/72)
I did not work in 5-8/72
I know that I have not
Recovered

11. Do you authorize any physician, hospital, agency, or other organization to disclose to the Social Security Administration or to the State agency that may review your entitlement for continuing disability benefits, any medical records or other information about your disability? ☒ Yes ☐ No

I certify that the above statements are true, correct, and complete to the best of my knowledge. I know that anyone who fraudulently conceals or fails to report a disqualifying event or who makes a false statement or representation of a material fact for use in determining a right to payment under the Social Security Act could be subject to a fine or imprisonment or both.

SIGN YOUR NAME AS YOU USUALLY WRITE IT

→ Alfred J McIlhenny

DATE

11-15-73

PHONE NUMBER

4451924

If the address shown on page one of this form is incorrect or incomplete, please enter your present address below

NUMBER AND STREET, APT. NO., P.O. BOX OR RURAL ROUTE

218 Bruce St

CITY

Syracuse

STATE

NY

ZIP CODE

13224

If we need more information after you send this form back to us, someone from the social security office or from the State agency that works with us in making disability decisions will get in touch with you.



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
BALTIMORE, MARYLAND 21241

REFER TO DI:CE

BUREAU OF
DISABILITY INSURANCE

Mr Alfred McGilberry
218 Bruce St
Syracuse NY 13224

Date June 20, 1972

Social Security Number
157-22-7334 HA

Our records show:

- ☐ That you have worked since _____
☒ \$ 3869.99 has been reported to your social security
record for the period beginning January 1972.

We need more information from you to decide if you should continue to receive disability benefits.

Your cash benefits may be continued or stopped, depending on whether you are again able to do substantial gainful work. Your medical condition may have improved enough for you to do this. But even if your condition has not improved, your work itself may show that you now have the ability to do substantial gainful work.

To make the decision about your benefits, we need to know just what your duties are in the work you do. How much you are paid for doing this work is also very important. Usually, if you earn more than \$140 a month before deductions, you are doing substantial gainful work.

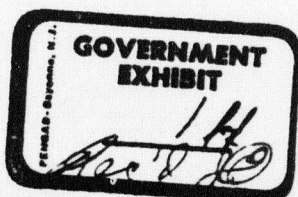
To give us the information we need about your condition and your work, please answer the questions on the next three pages. Sign your name at the bottom of the last page, and return the form within 10 days. Please use the postage-free envelope enclosed.

If you have any questions, or you need help in filling out the form, please telephone or visit any social security office. The people there will be happy to help you. You can find the telephone number and address in the telephone directory listed under "Social Security Administration", or you can ask at your local post office. If you visit the social security office, please take this letter with you.

Sincerely yours,

C. C. Hall

C. C. Hall
Assistant Director



SSA-821(a) 13-721

A-30

REPORT OF WORK ACTIVITY-CONTINUING DISABILITY

I understand that this report will be used to determine whether to continue or to stop my disability cash benefits.

1. Have you worked at any time since the date shown in the first paragraph of the preceding page?

☒ Yes. If "yes", be sure to answer all the following questions. If any question does not apply to you, please explain in the space for remarks (number 10 on page 4).

☐ No. If "no", skip questions 2 to 8 and go to question 9 page 4. (If earnings have been reported to your social security record - see amount entered in the first paragraph of the preceding page - but you have not worked, please explain in the space for remarks - number 10 on page 4. For example state if the amount reported represents sick pay, vacation pay, etc.) If you cannot account for the reported earnings, please telephone or visit your social security office.

2. Please furnish the information requested about your present or most recent employer. Use paragraph 7 on page 3 to list any other employers you worked for since the date shown in the first paragraph of the preceding page.

NAME OF EMPLOYER

Syracuse University

EMPLOYER'S ADDRESS

150 Marshall Street Syracuse, N.Y.

DATE YOU STARTED WORKING FOR THIS EMPLOYER

MONTH

May

DAY

1

YEAR

1972

3. Your earnings (total earnings before deductions)

Per Hour \$ _____ or Per Week \$ _____ or Per Month \$ _____

4. Since you started working for this employer, have there been any months in which your total monthly earnings (before any deductions) were \$50 or less?

☐ No ☐ Yes If "yes", list each month and the amount earned that month.

5. Are you still working for this employer? ☐ Yes ☒ No

If no, when did you stop working for this employer?

MONTH

May

DAY

15

YEAR

1972

Explain why you stopped working

The job was a Term job just using my knowledge of Dating and no physical work. I help them to Consolidate their Dating and help me in a financial crisis.

6. What is your Job Title?	A. Job Title
B. Describe	

7. If you have worked for other employers since the date shown in the letter on top of this form please furnish the following information for each employer:

(a) Name of employer	(b) Address of employer
(c) Dates of employment	(d) Earnings per month before deductions
(e) Any months where you earned \$50 or less	

(Use paragraph 10 on page 4 if you need additional space for describing work for other employers.)

8. (a) Has your doctor told you to limit your activities in any way?

☐ No ☒ Yes ☐ Did not say

(b) If "Yes", give the name of the doctor and what he told you about limiting your activities.

DR Keighley, Syracuse Veterans Administration Hospital, make sure I get plenty rest and no physical exertion

(c) When did your doctor tell you this? every monthly visit

(d) Does your impairment affect your ability to do your work?

☐ No ☒ Yes (If yes, explain how)

I have grave trouble breathing and dizzy spells combined, and from time to time savage coughing spells which cuts off almost completely my breath

9. (a) Are you receiving services from or through the State vocational rehabilitation agency?

☒ No

☐ Yes If "Yes," answer question (b)

(b) Name and address of servicing rehabilitation office and counselor.

10. Remarks: Use the space below for explanation of question number one. Also, enter here any additional information that you believe is important and will assist in the review of your continuing entitlement to social security disability benefits. (If you need more space, use a separate sheet of paper. Also, if you wish, you may attach any evidence that shows your current condition.)

I would love to work on a meaningful job
I cannot pass a physical examination.
Everytime a doctor listens to my chest
or check my EXRAY they reject me.
Walking for a hour causes vomiting and
gagging. I have asked people to give me
a part time work and most are afraid
it is impossible for me to cut grass or
shovel snow. I have asked doctors for
help they say id no cure it will get
worse with age. My family and I live
knowing it may end for me anytime with
a coughing attack.

11. Do you authorize any physician, hospital, agency, or other organization to disclose to the Social Security Administration or to the State agency that may review your entitlement for continuing disability benefits, any medical records or other information about your disability?

☒ Yes

~~they~~ can get ^{them} ^{copies}

I certify that the above statements are true, correct, and complete to the best of my knowledge. I know that anyone who fraudulently conceals or fails to report a disqualifying event or who makes a false statement or representation of a material fact for use in determining a right to payment under the Social Security Act could be subject to a fine or imprisonment or both.

SIGN YOUR NAME AS YOU USUALLY WRITE IT

➔ Alfred M. Sullivan

DATE

7/4/72

PHONE NUMBER

445-1924

If we need more information after you send this form back to us, someone from the social security office or from the State agency that works with us in making disability decisions will get in touch with you.

A-4-
A-33

REPORT OF CONTACT
(Use ink or typewriter)

ACCOUNT NUMBER AND SYMBOL

157-22-7334

REVIEWING OFFICE

NAME OF WAGE EARNER OR SELF-EMPLOYED PERSON

TO: NY P BIR CH KC SF DBS DIO SA

Alfred McGilberry

PERSON(S) CONTACTED AND ADDRESSES:

☒ WE OR SE PERSON ☐ OTHER (Specify)

CONTACT MADE:

☐ DO ☐ BO ☐ CS ☐ HOME ☒ PHONE:

☐ OTHER

DATE OF CONTACT

11/19/73

SUBJECT

OUT: 315-472-6633

PURPOSE: Cessation interview.

FACTS: I told the wage earner he was going to be ceased as of 4/73 due to work activity. He told me that he had not applied at the district office in Syracuse, that he was working and that he did not understand why he had not been informed when his benefits should have been ceased. He said that the lady who interviewed him in Syracuse, a Mrs. Wickes, told him that she remembers him having been in before and that she would try to find the reports she sent to the District Office that he had been working. He understood the reason for his cessation and agreed with the decision. His only problem was that he did not understand why he had not been notified sooner. He had no further evidence to submit.

NEXT ACTION: Prepare determination.



J. LaFerrera

SIGNATURE

DISTRICT OFFICE

☐ CR ☐ FR ☐ SR ☐ CLAIMS
CLERICAL
Disability Examiner
☒ OTHER (Specify)

DATE OF REPORT

PAGE 1 OF 1

A-34

DO NOT WRITE IN MARGIN

DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

VOLUNTARY STATEMENT TO EXPLAIN IRREGULARITY

NAME OF WAGE EARNER OR SELF-EMPLOYED PERSON

SOCIAL SECURITY CLAIM NUMBER

*Albert Mc Gillberry**157 | 22 | 7334*

Nature of Irregularity:

Possible Fraud

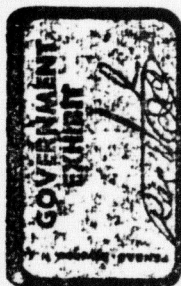
I understand that it is the policy of the Social Security Administration to require that all irregularities of the above nature be reviewed to determine whether there has been a violation of any penal provisions of the Social Security Act. (Where this review indicates there has been a violation, the file is referred to the Department of Justice for its consideration.) For purposes of the review I may, if I choose to do so, make a statement explaining the circumstances surrounding the irregularity.

I understand that this statement may be used against me in the trial of any criminal charges which the Government may bring regarding this matter. I further understand that I have the right to consult with a lawyer before giving any information or evidence and to have a lawyer present during any interview, and that I have the right to refuse to make any statement or to furnish any other evidence requested of me.

Understanding this, I hereby make the following statement voluntarily:

☐ In the presence of my lawyer, _____ (Name)

☒ No lawyer is present.



I came into the Social Security District Office in Syracuse, N.Y. in March 1971 to inform them that I would be taking a job at the Super Deuper Supermarket in Baldwinsville, N.Y.

I was told that I could work until such time that the Social Security Administration felt that I was ^{ADP} no longer entitled because of recovery.

I came into the District Office

at other times during the year-1971
to discuss my work activity. Again,
I was told nothing in regards to
the effect my work would have on
my benefits.

I felt that my contacts with
the district office people were generally
a put off- They never seemed to
take the time to explain anything to
me in detail.

Regarding my work at Syracuse
University, I did not inform anyone
in the district office of it.

When I came in to discuss my
work at the Melrose Hotel in
January 1971 and the Waldman Hotel also
in 1971. I was informed nothing of
the effect on benefits.

I wish to reaffirm the fact

Knowing that anyone making a false statement or representation of a material fact in an application or for use
in determining a right to payment under the Social Security Act commits a crime punishable under Federal law,
I certify that the above statements are true.

CERTIFICATION BY WITNESS(ES) TO EXECUTION OF STATEMENT

I certify that I witnessed the making of this statement and that it
was made voluntarily and of the person's free will.

1. SIGNATURE (and title of SSA employee)

SYRACUSE, N.Y. 13203

AUG 27 1974

ADDRESS (or office of SSA)

21101

SSA DISTRICT OFFICE

2. SIGNATURE (and title of SSA employee)

ADDRESS (or office of SSA)

SIGNATURE (Write in ink-First, Middle Initial, Last Name)

Alfred M. Sullivan

MAILING ADDRESS (Number and Street, P.O. Box or Rural Route)

CITY AND STATE

ZIP CODE

DATE (Mo., Day, Year)

TIME

A.M.
P.M.

TELEPHONE NO. (If none
available, write "None")

A-36



DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

Form approved.
Budget Bureau No. 72-R0442

(22)

STATEMENT OF CLAIMANT OR OTHER PERSON

NAME OF WAGE EARNER OR SELF-EMPLOYED PERSON <i>Alfred McElberry</i>	SOCIAL SECURITY NUMBER <i>157-22-7334</i>
NAME OF PERSON MAKING STATEMENT (If other than above wage earner or self-employed person)	RELATIONSHIP TO WAGE EARNER OR SELF-EMPLOYED PERSON

NOTICE.—Whoever makes or causes to be made any false statement or representation of a material fact in an application or for use in determining a right to payment under the Social Security Act is subject to not more than a \$1,000 fine or 1 year of imprisonment, or both.

Understanding that this statement is for the use of the Social Security Administration, I hereby certify that—

That I did notify the Social Security Administration, via the Syracuse District Office, of my work activity before July of 1972. I myself saw the people writing down and documenting what I had said.

In 1972 and 1973 the only employer I had was Sam Della Dodge.

I received a phone call from Philadelphia, Pa. in July (I believe) of 1973. A man told me that my disability benefits were being stopped immediately and that the Administration would be in touch with me.

later.

~~I want to state that~~
This was the last contact that I had with the Administration until this present contact.

One other point, before I took the job at Sam DeWitt Dodge in August of the year 1972, I ^{CAME INTO} ~~came into~~ the Syracuse Office in person and told them I would be taking the job.

I know that anyone making a false statement or representation of a material fact in an application or for use in determining a right to payment under the Social Security Act commits a crime punishable under Federal law. I affirm that the above statements are true.

SIGNATURE OF PERSON MAKING STATEMENT

Signature (First name, middle initial, last name) (Write in ink)

Date (Month, day, year)

SIGN
HERE

Arthur M. Sullivan

Telephone Number

Mailing Address (Number and street, Apt. No., P.O. Box, Rural Route)

City and State

ZIP Code

Enter Name of County (if any) in which you now live

Witnesses are required ONLY if this statement has been signed by mark (X) above. **SYRACUSE, N.Y. 13203**
two witnesses to the signing who know the individual must sign below, giving their full addresses.

1. Signature of Witness

2. Signature of Witness

AUG 27 1974

Address (Number and street, City, State, and ZIP Code)

Address (Number and street, City, State, and ZIP Code)

21101
SSA DISTRICT OFFICE

A-38

REPORT OF CONTACT
(Use ink or typewriter)

ACCOUNT NUMBER AND SYMBOL

157-22-7334

REVIEWING OFFICE

TO: NY P BIR CH KC SF DBS DIO SA

NAME OF WAGE EARNER OR SELF-EMPLOYED PERSON

Alfred McGilberry

PERSON(S) CONTACTED AND ADDRESSES:

☒ WE OR SE PERSON ☐ OTHER (Specify)

CONTACT MADE:

☐ DO ☐ BO ☐ CS ☐ HOME ☒ PHONE:

☐ OTHER

DATE OF CONTACT

11/19/73

SUBJECT

OUT: 315-472-6633

PURPOSE: Cessation interview.

FACTS: I told the wage earner he was going to be ceased

as of 4/73 due to work activity. He told me that he had not

applied at the district office in Syracuse, that he was

working and that he did not understand why he had not been

informed when his benefits should have been ceased. He said

that the lady who interviewed him in Syracuse, a Mrs. Wickes,

told him that she remembers him having been in before and

that she would try to find the reports she sent to the District

Office that he had been working. He understood the reason for

his cessation and agreed with the decision. His only problem

was that he did not understand why he had not been notified

sooner. He had no further evidence to submit.

NEXT ACTION: Prepare determination.

DO NOT WRITE IN MARGIN

J. LaFerrera

SIGNATURE

DISTRICT OFFICE

A-39

☐ CR ☐ FR ☐ SR ☐ CLAIMS
CLERICAL
Disability Examiner
☒ OTHER (Specify)

DATE OF REPORT

PAGE 1 of 1

REPORT OF CONTACT
 (Use ink or typewriter)

ACCOUNT NUMBER AND SYMBOL

157-22-7334

REVIEWING OFFICE

NAME OF WAGE EARNER OR SELF-EMPLOYED PERSON

TO: NY P BIR CH KC SF DBS DIO SA

Alfred McGilberry

PERSON(S) CONTACTED AND ADDRESSES:

☒ WE OR SE PERSON ☐ OTHER (Specify)

CONTACT MADE:

☐ DO ☐ BO ☐ CS ☐ HOME ☒ PHONE:☐ OTHER

DATE OF CONTACT

1/15/74

SUBJECT

OUT: 315-472-6633

PURPOSE: To inform the wage earner that his benefits for a period of disability were going to be reopened and revised.

FACTS: I told the claimant that his period of disability was going to be reopened and revised to establish that there has never been a period of disability. I told him that based on his work activity it appeared he should not have been entitled to a period of disability since he returned to work in the waiting period. Wage earner said quite calmly that he was having a heart attack and when I sort of passed off the suggestion that he was having a heart attack he said "I am not chiding." Mr. McGilberry told me he was actually almost in shock at the prospect of having to pay back all the money he has received from Social Security. He said that he did not feel it was fair since he had been into the Syracuse District Office repeatedly to tell them that he had been working. He felt it was through no fault of his own that he continued receiving the benefits but through some oversight on the part of Social Security Administration. He told me that he was just doing what the District Office told him to do when he continued cashing the checks after he had informed them of his work activity.

SIGNATURE

DISTRICT OFFICE

☐ CR ☐ FR ☐ SR ☐ CLAIMS CLERICAL☐ OTHER (Specify)

DATE OF REPORT

PAGE 1 OF 2

A-40

DO NOT WRITE IN MARGIN

REPORT OF CONTACT
(Use ink or typewriter)

Code 20

REVIEWING OFFICE	ACCOUNT NUMBER AND SYMBOL 157-22-7334
TO: NY P BIR CH KC SF DBS DIO SA	NAME OF WAGE EARNER OR SELF-EMPLOYED PERSON Alfred McGilberry

PERSON(S) CONTACTED AND ADDRESSES:

☒ WE OR SE PERSON ☐ OTHER (Specify)

CONTACT MADE:

☐ DO ☐ BO ☐ CS ☐ HOME ☒ PHONE:

☐ OTHER

DATE OF CONTACT

1/15/74

SUBJECT

I told him that arrangements could probably be worked out for repayment through the local District Office once a decision had become final. I tried to reassure him that the arrangements would be equitable for all and not to worry about the situation until he received a letter from the Bureau of Disability Insurance in Baltimore, at which time he should go to his local District Office and try to work out the amount, if any, of any repayment, etc. The wage earner thanked me for my kindness and my consideration and taking the time to explain the situation to him.

NEXT ACTION: Prepare determination.

G. Bell

SIGNATURE

DISTRICT OFFICE

☐ CR ☐ FR ☐ SR ☐ CLAIMS
CLERICAL
Disability Examiner
☒ OTHER (Specify)

DATE OF REPORT

1/17/74

PAGE 2 OF 2

FORM SSA-5002 (1-72)

#4 164 D1/15 1/17

GB:emn RCH 3

A-41

DO NOT WRITE IN MARGIN



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
BALTIMORE, MARYLAND 21241

20

BUREAU OF
DISABILITY INSURANCE

REFER TO:
IDI-676-K2
157-22-7334

NOTICE OF RECONSIDERATION DETERMINATION

Mr. Alfred McGilberry
218 Bruce Street
Syracuse, New York 13224

Dear Mr. McGilberry:

Upon receipt of additional evidence about your work activity, we had your claim reviewed to see whether the decision awarding you disability benefits was correct. After studying all the facts in your case we find that the previous decision must be revised and that your claim for disability benefits must be denied. Therefore, you were not entitled to benefit payments.

Under the social security regulations, when a person's earnings average more than \$140.00 per month he is generally considered to be performing substantial gainful work. You were found to be under a disability beginning December 1970. However, later information shows that you returned to substantial gainful work in April 1971 and have continued working since that time.

Since your inability to work ended in April 1971, you were not disabled for a sufficient period of time to qualify for benefit payments under the law. However, if you stop engaging in substantial gainful work you should get in touch with your social security office about filing a new application.

This action is based upon the additional evidence received and replaces our previous determination.

Based on this determination you were not entitled to monthly benefits of \$168.30 for July 1971 through August 1972 and \$215.00 for September 1972 through December 1973. Therefore, you have been overpaid \$5,796.20. Your wife and Michelle were not entitled to monthly benefits of \$60.80 for July 1971 through October 1971, \$40.60 for November 1971 through December 1971, \$44.80 for January 1972 through August 1972 and \$53.70 for September 1972 through December 1973. They have each been overpaid \$1,542.00. Moniquey was not entitled to monthly benefits of \$40.60 for November 1971 and December 1971, \$44.80 for January 1972 through August 1972 and \$53.70 for September 1972 through December 1973. She has been overpaid \$1,298.80. The total overpayment to you and your family is \$10,079.00.

If you are able to refund this amount, please prepare a check or money order payable to "Social Security Administration, Claim No. 157-22-7334 HA, HB2, HC," and mail it in the enclosed envelope. If you are unable to repay your indebtedness in full at this time, you may repay it in monthly installments.

THinkel:slb:3/14/74

A-42

THH/KC
3-14-74

BEST COPY AVAILABLE

Under social security law, any overpayment must be withheld from benefits or paid back unless both of the following are true:

1. The overpayment wasn't your fault in any way and you cashed the checks because you thought they were correct, and
2. You couldn't meet your necessary living expenses if you had to pay back the overpayment or it would be unfair for some other reason.

To decide whether repayment would cause you financial hardship, we shall need a statement of your assets, and monthly income, and expenses. If you think you meet both conditions, call, write, or visit any social security office. Please take this letter with you if you visit the office.

We hope this satisfactorily explains the reason for the determination in your case. If you believe that the reconsideration determination is not correct, you may request a hearing before an administrative law judge of the Bureau of Hearings and Appeals. If you want a hearing, you must request it not later than 6 months from the date of this notice. You may make your request through any social security office. Read the enclosed leaflet BHA-1 for a full explanation of your right to appeal.

Robert J. Duvall
Director, Division of Reconsideration

Enclosures 3
BHA-1
Envelope
SSA-1998

A-43

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

21

17 534

IDI-676-OR
157-22-7334

Mr. Alfred McGilberry
218 Bruce Street
Syracuse, New York 13224

Dear Mr. McGilberry:

A review of our records shows that the correct overpayment to you and your family is \$10,809.70 rather than \$10,079.00 as previously advised.

If you cannot refund the full amount now, you should submit a partial payment. With this payment, send an explanation of your circumstances and a definite plan for paying the balance. Your plan should show the amount you will pay each month and the date on which you will make each payment. The initial payment should be made within 30 days from the receipt of this letter. Please make your check or money order payable to "Social Security Administration", showing your claim number, and send it to us in the enclosed envelope.

Unless we hear from you within 30 days, it may be necessary to refer this matter to the General Accounting Office for further collection action.

If you have questions about your claim, you should get in touch with any social security office. Most questions can be handled by telephone or mail. If you visit the office, however, please take this letter with you.

ISSUED BY: Bureau of Disability Insurance
Division of Reconsideration

Enclosure
Envelope

Webster:pdw 7-12-74

A-44

FILE COPY

OFFICE	SURNAME	DATE	OFFICE	SURNAME	DATE
IDI-676-OR	Bu Elwite/r	7-12-74			

REPORT OF CONTACT

(Use ink or typewriter)

ACCOUNT NUMBER AND SYMBOL

157-22-7334

REVIEWING OFFICE

NAME OF WAGE EARNER OR SELF-EMPLOYED PERSON

TO: NE MAT SE GL MAM WN BDI DIO SA

Albert Mc Williams

PERSON(S) CONTACTED AND ADDRESSES

☒ WE OR SE PERSON ☐ OTHER (Specify)

CONTACT MADE:

☐ DO ☐ BO ☐ CS ☐ HOME ☐ PHONE:

☐ OTHER

DATE OF CONTACT

7/25/74

SUBJECT

Contact was very good with dates.

He seemed sincere in his allegations regarding his reporting work, reporting timely, even if the official folder does not reflect same.

He D.P. the new person who handled the line. He did not discuss any further around at this time.

SIGNATURE

DISTRICT OFFICE

☒ CR

☐ FR

☐ SR

☐ CLAIMS

CLERICAL

☐ OTHER (Specify)

DATE OF REPORT

7/25/74

PAGE 1 OF 1

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DO NOT WRITE IN MARGIN



DISABILITY UNIT

Form approved.
Budget Bureau No. 72-R237 4

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
57 Albany Ave
Kingston, New York 12401

REFER TO: Alfred McGilberry
157-22-7334

Melbourne Hotel
Briggs Highway
Ellenville, NY 13428

TELEPHONE: 338-7308

Dear Sir:

It is necessary in the administration of the Social Security Act that we know the amount of wages earned by the above named person in each of the months checked below. We will appreciate your furnishing this information in the space provided. If no wages were earned in any of the months in question, please write "none" in the proper spaces. If this person has earnings in the form of tips, please include the amount in the totals for each month.

Please note that we need to know the amount earned in each of the months checked, regardless of the amounts paid.

An envelope requiring no postage is enclosed for your convenience.

Sincerely yours,

Idea E. Davis
Idea E. Davis
Service Representative

Enclosure

YEAR 1971

<input checked="" type="checkbox"/> January \$ <u>117.50</u>	<input checked="" type="checkbox"/> April \$ _____	<input checked="" type="checkbox"/> July \$ _____	<input checked="" type="checkbox"/> October \$ _____
<input checked="" type="checkbox"/> February <u>1</u>	<input checked="" type="checkbox"/> May _____	<input checked="" type="checkbox"/> August _____	<input checked="" type="checkbox"/> November _____
<input checked="" type="checkbox"/> March _____	<input checked="" type="checkbox"/> June _____	<input checked="" type="checkbox"/> September _____	<input checked="" type="checkbox"/> December _____

✓ Employer Melbourne Hotel Inc

✓ Signature Idea E. Davis

✓ Title Rep

✓ Telephone No. 647-6410

✓ Date 10/13/71

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STATE OF NEW YORK)
COUNTY OF ONONDAGA) SS:
CITY OF SYRACUSE)


ROBIN L. GOODEN, being duly sworn, deposes and says:

1. That I am over the age of 18 years, and reside at 114 Roxboro Circle, in the City of Syracuse, County of Onondaga and State of New York.

2. That I am in the employ of William J. Fallon, Esq., and on the 6th day of May, 1977, I mailed eight copies of the brief with limited appendix, and three copies of the relevent portions of the trial transcript to the United States Court of Appeals for the Second Circuit, Attention Mariam Bonnet, at the United States Court House, Foley Square, New York, New York, 10007, by delivering same to the Post Office located in the City of Syracuse, New York, and affixing the correct amount of postage to same.

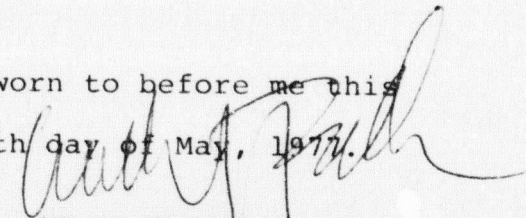
3. That the brief hereinabove referred to is on the following matter:

United States of America, Appellee,
Docket No. 77-1056 -vs-
Alfred D. McGilberry, Appellant.


ROBIN L. GOODEN

Sworn to before me this

6th day of May, 1977.


WILLIAM JOHN FALLON
Notary Public in the State of New York
Qualified in Onondaga Co. No. 34-6228600
My Commission Expires March 30, 1978

